



Ohio Legislative Service Commission

Final Analysis

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Am. S.B. 270

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(As Passed by the General Assembly)

Sens. Hughes and R. Miller, Goodman, Harris, Schiavoni, Strahorn, Turner, Cates

Reps. Bacon, Carney, Chandler, Combs, Domenick, Gardner, Garland, Grossman, Harris, Hite, Letson, Luckie, Stewart, Weddington, Yuko

Effective date: September 13, 2010

ACT SUMMARY

Dam construction permit pilot program

- Establishes a dam construction permit pilot program.
- Requires the Chief of the Division of Soil and Water Resources in the Department of Natural Resources to determine the filing fee for an eligible dam project for purposes of the pilot program.
- Authorizes the Chief to accept a surety bond or other security for an eligible dam project that is less than the surety bond or other security required under continuing law governing dams, and authorizes the Chief to accept incremental surety bond or other security amounts in accordance with specified requirements.
- Prohibits the bond or other security from being released until the reservoir is filled to a normal operating pool level and final approval is given by the Chief if the eligible dam project cannot be filled to the normal operating pool level within one year after the approval of the completed construction.
- Requires the Chief within 30 days after the issuance of the construction permit for the eligible dam project that is the subject of the pilot program to submit a report to the General Assembly outlining the Chief's findings as to the efficacy of the pilot program.

Joint recreation board/district

- Changes the entity owning, operating, and maintaining the park or recreational facility that was the site of the United States Christopher Columbus Quincentenary Jubilee horticulture exhibition (Franklin Park Conservatory) from a joint recreation board to a joint recreation district.
- Authorizes that joint recreation district to acquire, construct, maintain, and operate additional facilities and greenhouses, authorizes it to issue revenue bonds for the acquisition, construction, furnishing, or equipping of any property, and establishes requirements for the bonds.
- Permits that joint recreation district to enter into contracts for a secured line of credit with a bank, savings and loan association, or savings bank.
- Expands that joint recreation district's power with respect to its own properties, facilities, activities, and programs.
- Authorizes that joint recreation district to enter into lease-purchase agreements, to designate the amounts and forms of property and casualty insurance to purchase, and to exercise other powers granted in the agreement that originally established the district.

CONTENT AND OPERATION

Dam construction permit pilot program

The act establishes a dam construction permit pilot program under which the Chief of the Division of Soil and Water Resources in the Department of Natural Resources is required to select one eligible dam project (Section 3(B)). Under the act, "eligible dam project" means a proposed upground reservoir that has an estimated construction cost exceeding \$40 million (Section 3(A)). The act requires the eligible dam project to comply with all applicable requirements established in and rules adopted under continuing law governing dams, except as discussed below (Section 3(B)).

Continuing law generally requires a person who wishes to construct a dam to obtain a construction permit from the Chief of the Division of Soil and Water Resources. In order to obtain a permit, the person must submit copies of the dam's plans and specifications, including a detailed cost estimate, and a filing fee that is based on the cost estimate determined in accordance with a statutory schedule. The filing fee cannot be less than \$1,000 or more than \$100,000. (R.C. 1521.06, not in the act.) The person also must file a surety bond or other security conditioned on satisfactory completion of the

project. The bond or other surety must be in an amount that is equal to 50% of the estimated cost of the project. (R.C. 1521.061, not in the act.)

The act states that notwithstanding the specific requirements regarding the amount of a filing fee established in ongoing law, the filing fee for an eligible dam project for purposes of the pilot program must be determined by the Chief, but cannot exceed 1% of the detailed cost estimate for the eligible dam project that is filed with and approved by the Chief (Section 3(C)).

Additionally, under the act, the Chief may accept a surety bond or other security for an eligible dam project that is less than the surety bond or other security otherwise required under continuing law if the applicant for the permit demonstrates a lesser cost to mitigate a potential failure of the eligible dam project during construction or first filling of the eligible dam project. The act also authorizes the Chief to accept incremental surety bond or other security amounts scheduled over the construction period of the eligible dam project if the applicant demonstrates that the incremental amounts are sufficient to mitigate a potential failure during different phases of construction. The Chief is required to include the phased surety schedule as a term of the permit issued for the eligible dam project under continuing law. (Section 3(D)(1).)

The act states that if the eligible dam project cannot be filled to the normal operating pool level within one year after the approval of the completed construction, the bond or other security cannot be released until the reservoir is filled to a normal operating pool level and final approval is given by the Chief. The act also states that the bond or other security for the eligible dam project must be released within 30 days after the approval of the Chief has been given. (Section 3(D)(2).)

The act requires that within 30 days after the issuance of the construction permit for the eligible dam project that is the subject of the dam construction permit pilot program, the Chief must submit a report to the General Assembly outlining the Chief's findings as to the efficacy of the pilot program. The report may include recommendations regarding statutory changes necessary for the effective regulation of dams in Ohio. (Section 3(E).) The provisions of the act concerning the dam construction permit pilot program expire upon the submission of the report (Section 3(F)).

Joint recreation board/district

Background

Under continuing law, any municipal corporation, township, township park district, county, or school district, jointly with one or more other such subdivisions or with an educational service center, in any combination, and a joint recreation district,

may acquire property for, construct, operate, equip, and maintain, and appropriate money for, parks, playgrounds, playfields, gymnasiums, public baths, swimming pools, indoor recreation centers, or community centers. Further, each of the same subdivisions engaged in the joint operation and maintenance of parks and recreation facilities may, by resolution, establish a joint recreation board or a joint recreation district to operate and maintain parks or recreation facilities. A resolution adopted in either case must provide for the membership of the board responsible for overseeing the joint board or district.

A joint recreation district, once created, has the same powers as an individual subdivision member does with respect to recreation facilities.¹ All operating expenses are payable from the district's general fund. In addition, the district, in accordance with the Ohio Uniform Public Securities Law, may issue bonds for the purpose of acquiring lands or buildings or extending, enlarging, or improving existing lands, facilities, or buildings for parks, recreational facilities, and community centers and the equipment thereof. The district also has the authority to levy a property tax to acquire, maintain, and operate recreational facilities and community centers. (R.C. 755.14 and 755.16 to 755.18, not in the act.)

Membership of a joint recreation board hosting the Christopher Columbus Quincentenary Jubilee horticulture exhibition

Under law retained in part by the act, if a joint recreation board owns, operates, or maintains a park or recreational facility that is the site or former site of an exhibition sanctioned by the United States Christopher Columbus Quincentenary Jubilee Commission that is or was sponsored by an organization that is also sponsoring or has sponsored an exhibition sanctioned by the International Association of Horticulture Producers (hereafter referred to as the horticulture exhibition),² then the Governor, Speaker of the House of Representatives, and President of the Senate must each appoint one member to the joint recreation board.

Rather than having the Governor, Speaker, and President appoint three members to the joint recreation *board* owning, operating, and maintaining a park or recreational facility that was the site of the horticulture exhibition, the act provides that they appoint three members to the board of trustees of the joint recreation *district* owning, operating,

¹ Joint recreation boards are only marginally affected by the act so they are addressed only in the next topic in this analysis.

² The horticulture exhibition referred to was the 1992 Ameriflora Exhibition held in the Franklin Park Conservatory in Columbus. (See Ameriflora, Ohio History Central, <http://www.ohiohistorycentral.org/entry.php?rec=1651>.)

or maintaining that park or facility.³ The act otherwise retains the statutory appointment process for the joint recreation board, but applies it to the board of trustees of the joint recreation district, not the joint recreation board. (R.C. 755.14(B) and 755.141(A).)

Powers of the joint recreation district board of trustees hosting the horticulture exhibition

Under the act, the board of trustees of the joint recreation district owning, operating, or maintaining a park or recreational facility that was the site of the horticulture exhibition not only has the same powers as any other joint recreation district, but also has additional specified powers as follows:

Additional facilities

The act authorizes the joint recreation district board of trustees to acquire, construct, maintain, and operate horticultural facilities, public banquet facilities, and greenhouses in addition to other parks, recreational facilities, and community centers permitted under ongoing law (R.C. 755.141(C)).

Revenue bonds

The act allows the joint recreation district board of trustees, by resolution, to issue revenue bonds beyond the legal limit of bonded indebtedness for the acquisition, construction, furnishing, or equipping of any real or personal property that it is authorized to acquire, construct, furnish, or equip, including all incidental or related costs. The revenue bonds may be secured only by a pledge of, and a lien on, the district's revenues designated in the resolution, including any property to be acquired, constructed, furnished, or equipped with bond proceeds, after provision only for the reasonable cost of operating, maintaining, and repairing the property. The revenue bonds may also be secured by the district's covenant to maintain rates or charges to produce revenue sufficient to operate, maintain, and repair the property, to meet the bonds' interest and principal requirements, and to establish and maintain reserves for those purposes.

The district's board, also by resolution, may provide for the issuance of additional revenue bonds from time to time, to be secured equally and ratably, without preference, priority, or distinction, with outstanding revenue bonds, but subject to the terms and limitations of any trust agreement (described below) and of any resolution

³ The Franklin Park Conservatory apparently is organized as a joint recreation district, with a board of trustees, despite ongoing law, which designates it a joint recreation board. (See www.fpconservatory.org/governance.htm.)

authorizing bonds then outstanding. The district board, by resolution, may pledge and subject to a lien for the payment of debt charges the revenues from additional district property, to the same extent as the revenues described above.

The act further authorizes the district's board to secure its revenue bonds by a trust agreement between the joint recreation district and a corporate trustee, which may be any trust company or bank having powers of a trust company within or outside Ohio. If a district board opts to secure its revenue with such a trust agreement, the agreement may pledge or assign the revenues received by the district, but not the district's general credit and taxing power.

The trust agreement or the resolution providing for the issuance of revenue bonds may (1) specify the rights and remedies of the bondholders and trustees, and (2) contain other provisions to protect and enforce bondholder and trustee rights and remedies that the district board determines to be reasonable and proper. The trust agreement or resolution may provide for the custody, investment, and disbursement of all moneys derived from the sale of the bonds or from the district's revenues except for the money received from taxes levied by a board of county commissioners for the purposes of paying debt charges on bonds or bond anticipation notes issued for parks, recreational facilities, and community centers. The agreement or resolution may provide for the deposit of such funds without regard to Ohio's Uniform Depository Act.

Any bonds issued pursuant to the act must have all qualities and incidents of negotiable instruments, subject to provisions for registration, and may be issued in coupon, fully registered, or other form, or any combination thereof, as determined by the district's board of trustees. The act allows the district to provide for the registration of any coupon bonds only as to principal, or as to both principal and interest, and to provide for the conversion into coupon bonds of any fully registered bonds or bonds registered as to both principal or interest.

The revenue bonds, as provided for in or pursuant to their authorizing resolution, must bear interest rates and dates, and mature within 30 years after the date of issuance, in the amount, at the time, and in the designated number of installments. Any original issue of revenue bonds must mature not later than 30 years from the issuance date. The authorizing resolution must provide for the execution of the bonds, which may be by facsimile signature unless specifically prohibited by the resolution, and the manner of the bonds' sale. The resolution also must include, or provide a way to determine, any other terms and conditions related to the issuance, sale, and retirement of the bonds that the district board determines to be reasonable and proper.

The act authorizes a joint recreation district to issue renewal notes and to refund any bonds whenever it considers it expedient whether or not the bonds to be refunded

have matured. The final maturity of any notes, including renewal notes, cannot be later than five years from the issuance date of the original issue of notes. The final maturity of any refunding bonds may not be later than the later of: (1) 30 years from the date of the original issuance of the bonds, or (2) the date by which, at the time of issuance of the refunding bonds, it is expected that the useful life of all of the property, except for interests in land, that has been refinanced with proceeds of the bonds will expire. The refunding bonds must be sold and the proceeds applied to the purchase, redemption, or payment of the bonds to be refunded and the costs of issuance of the refunding bonds.

The act provides that the bonds and notes issued, their transfer, and the income from their sale or transfer are always free from taxation in Ohio. (R.C. 755.141(D).)

Lines of credit

The act allows the district board of trustees to enter into contracts for a secured line of credit with a bank, savings and loan association, or savings bank if the contract meets the following requirements: (1) the term of the contract does not exceed one year, except that the contract may provide for its automatic renewal for up to four additional one-year periods, (2) the contract stipulates that the bank, savings and loan association, or savings bank may not commence a civil action against the board, any board member, or the county or municipal corporation to recover the principal, interest, or any charges or amounts remaining outstanding on the secured line of credit if the board defaults, (3) the contract provides that only the assets of the district can be used to secure the line of credit, and (4) the contract's terms and conditions comply with all federal and state law regulating secured lines of credit (R.C. 755.141(F)).⁴

Additional activities with respect to its property

The act authorizes a joint recreation district to do the following:

- Operate, directly or through agents, or otherwise provide for the operation of its properties, facilities, activities, and programs, and enter into related agreements and arrangements;
- Receive and apply the net proceeds of its properties, facilities, activities, and programs solely to manage, operate, develop, maintain, and repair its properties, buildings, facilities, improvements, and grounds;
- Impose and collect admission charges for selective events, exhibits, and facilities;

⁴ "Bank," "savings and loan association," and "savings bank" are defined in the Financial Institutions Law, in R.C. 1101.01, 1151.01, and 1161.01, respectively (not in the act).

- Offer memberships of various denominations for selective activities or facilities;
- Form advisory and support committees to the district board of trustees to provide counsel and assistance to the board in managing, operating, and developing district properties, buildings, facilities, improvements, and grounds;
- Grant licenses or enter into leases or contracts for the use of any part of district properties, facilities, buildings, and grounds for any length of time and on any terms and conditions the board deems appropriate and necessary;
- Grant easements in, through, or over district property;
- Receive and accept from any federal, state, county, municipal, or local government or agency any grant or contribution of money, property, labor, or other things of value, to be held, used, and applied for the purpose for which the grants and contributions are made; and
- Accept and expend gifts, grants, devises, and bequests of money and property and hold, use, and apply them according to their terms (R.C. 755.141(E)).

Lease-purchase agreements

The act authorizes a district board to enter into a lease-purchase agreement⁵ to acquire real or personal property it is authorized to acquire under the act. Such an agreement must provide for a series of terms in which no term extends beyond the end of the district's fiscal year in which the term commences. The act prohibits the terms from operating beyond the useful life of the real or personal property that is the subject of the agreement.⁶

The lease-purchase agreement must include a provision stating that, at the end of the agreement's final term, if all obligations of the joint recreation district have been

⁵ The act defines a "lease-purchase agreement" as a lease with an option to purchase.

⁶ The act provides that the "useful life" of the property is either the maximum number of installment payments permitted under the statute authorizing the board to acquire the property or, if there is no such statute, by the maximum number of years to maturity provided under the Ohio Uniform Public Securities Law for the issuance of bonds based on the specific type of facility. If the useful life cannot be ascertained through either of those methods, the act requires it to be estimated by the district's fiscal officer under that Law.

satisfied, the title to the leased property will vest in the district if it has not yet so vested. However, the lease-purchase agreement may require the district to pay an additional lump sum payment as a condition of obtaining that title.

The act authorizes the district board of trustees entering into a lease-purchase agreement to do any of the following with the property that is the subject of the agreement: (1) if the property is personal property, assign the board's rights to it, (2) grant the lessor a security interest in the property, or (3) if the property is real property, grant leases, easements, or licenses for underlying land or facilities under the board's control for terms not exceeding five years beyond the final term of the agreement.

The act specifies that the lease-purchase authority is in addition to, not in derogation of, any other financing authority provided by law. (R.C. 755.141(G).)

Insurance

The district board of trustees may designate the amounts and forms of property and casualty insurance protection to be provided and must pay for it from the district's operating funds. Under the act, any insurance obligation incurred by the district's board is not a general obligation of the board of county commissioners, the county, or the municipal corporation within the meaning of a general obligation under the Uniform Public Securities Law. (R.C. 755.141(B) and (F)(3).)

Other powers

The act authorizes the district's board to exercise such other powers that were granted to it in the agreement between the municipal corporation and the board of county commissioners establishing the joint recreation district (R.C. 755.141(H)).

HISTORY

ACTION	DATE
Introduced	05-25-10
Reported, S. State & Local Gov't & Veterans Affairs	05-27-10
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