



# Ohio Legislative Service Commission

## Bill Analysis

Dennis M. Papp

### Sub. S.B. 260\*

128th General Assembly

(As Reported by S. Judiciary - Criminal Justice)

Sens. Goodman, Hughes

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## BILL SUMMARY

- Prohibits the Governor's Residence Advisory Commission from using prison labor in exercising its responsibility for the care, provision, and placement of furnishings and other objects and accessories of the grounds and public areas of the first story of the Governor's residence and the care and placement of plants on the grounds.
- Prohibits the Department of Administrative Services from using prison labor in providing for the general maintenance of the Governor's residence.
- Specifies that, subject to exceptions that apply when the matter in question is within the jurisdiction or authority of the Division of Homeland Security of the Department of Public Safety, no executive order, no policy or practice of the Office of the Governor, and no policy, rule, or practice of the Department of Public Safety may: (1) require approval by the Governor, the Director of Public Safety, another official of that Department, or legal counsel for any of those officials for the State Highway Patrol to commence or continue an investigation within its law enforcement duties or authority, (2) provide any person identified in clause (1) with control or management of State Highway Patrol investigations, (3) restrict the State Highway Patrol from conferring with the Attorney General or an appropriate prosecuting authority regarding the Patrol's law enforcement duties or authority or its investigations, or (4) require approval by any person identified in clause (1) for the State Highway Patrol to refer any matter to an appropriate prosecuting authority.

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\* This analysis was prepared before the report of the Senate Judiciary - Criminal Justice Committee appeared in the Senate Journal. Note that the list of co-sponsors and the legislative history may be incomplete.

- Specifies that no provision of an executive order, policy, rule, or practice that violates the ban described in the preceding dot point is enforceable, regardless of whether the executive order, policy, rule, or practice was issued, prescribed, or adopted prior to, on, or after the bill's effective date.

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## CONTENT AND OPERATION

### Ban against use of prison labor at Governor's residence

#### Existing law

Existing law establishes the Governor's Residence Advisory Commission (see **COMMENT 1**) and assigns the Commission certain specified duties and functions. One duty requires the Commission to provide for the preservation, restoration, acquisition, and conservation of all decorations, objects of art, chandeliers, china, silver, statues, paintings, furnishings, accouterments, and other aesthetic materials that have been acquired, donated, loaned, or otherwise obtained by the State for the Governor's residence and that have been approved by the Commission. A second duty requires the Commission to provide for the maintenance of plants that have been acquired, donated, loaned, or otherwise obtained by the State for the Governor's residence and that have been approved by the Commission.

A third duty specifies that the Commission is responsible for the care, provision, repair, and placement of furnishings and other objects and accessories of the grounds and public areas of the first story of the Governor's residence and for the care and placement of plants on the grounds. In exercising this responsibility, the Commission must preserve and seek to further establish: (1) the authentic ambiance and decor of the historic era during which the Governor's residence was constructed, (2) the grounds as a representation of Ohio's natural ecosystems, and (3) the heritage garden for the purposes of: preserving, sustaining, and encouraging the use of native flora throughout the state; replicating the state's physiographic regions, plant communities, and natural landscapes; serving as an educational garden that demonstrates the artistic, industrial, political, horticultural, and geologic history of the state through the use of plants; and serving as a reservoir of rare species of plants from the physiographic regions of the state. As used in this provision, "heritage garden" means the botanical garden of native plants established at the Governor's residence, which is officially known as "the heritage garden at the Ohio Governor's residence."

Existing law specifies that the duties of the Commission specified above do not affect the obligation of the Department of Administrative Services to provide for and adopt policies and procedures regarding the use, general maintenance, and operating expenses of the Governor's residence. (R.C. 107.40(A), (B), (K), and (L).)

Various provisions of existing law, not in the bill, provide for a Department of Rehabilitation and Correction program for the employment of prisoners and govern the operation of the program (see **COMMENT 2**).

### **Operation of the bill**

The bill modifies the existing provisions described above regarding the maintenance and operation of the Governor's residence in two ways. First, it specifies that the Governor's Residence Advisory Commission cannot use prison labor to exercise its responsibility for the care, provision, repair, and placement of furnishings and other objects and accessories of the grounds and public areas of the first story of the Governor's residence and for the care and placement of plants on the grounds. Second, it also specifies that the Department of Administrative Services cannot use prison labor in providing for the general maintenance of the Governor's residence. (R.C. 107.40(B); see **COMMENT 3**.)

### **State Highway Patrol investigations**

#### **Prohibitions on executive orders, policies and practices, and rules of Governor's office and Department of Public Safety**

The bill specifies that, on and after its effective date, subject to the exemptions described below in "**Homeland Security-related exemptions**," no executive order, no policy or practice of the office of the Governor, and no "policy, rule, or practice of the Department of Public Safety" (see "**Definitions**," below) may do any of the following (R.C. 5503.031(A)):

(1) Require that the State Highway Patrol, or the Superintendent or any trooper of the Patrol, obtain approval of the Governor, the Director or "another official of the Department of Public Safety" (see "**Definitions**," below), or legal counsel for any of those officials in order for the Patrol or its troopers to commence or continue any criminal or administrative investigation that pertains to the enforcement of any laws in relation to which R.C. 5503.02, 5503.07, or 5503.34 (see **COMMENT 4**) or any other provision of law "that" (this word is included in error) grants the Patrol, the Superintendent, or troopers enforcement, investigative, or other law enforcement duties or authority;

(2) Authorize the Governor, the Director or another official of the Department of Public Safety, or legal counsel for any of those officials to direct, control, or manage an investigation by the State Highway Patrol, or the Superintendent or troopers of the Patrol, of a type referred to in paragraph (1), above, or any aspect of any such investigation;

(3) Restrict the State Highway Patrol, or the Superintendent or any trooper of the Patrol, from conferring with the Attorney General or an appropriate prosecuting authority regarding the enforcement of any laws referred to in paragraph (1), above or regarding an investigation of a type referred to in that paragraph;

(4) Require that the State Highway Patrol, or the Superintendent or any trooper of the Patrol, obtain approval of the Governor, the Director or another official of the Department of Public Safety, or legal counsel for any of those officials in order to refer any matter to an appropriate prosecuting authority.

### **Homeland Security-related exemptions**

The bill provides the following exemptions from the prohibitions described above in "**Prohibitions on executive orders, policies and practices, and rules of Governor's office and Department of Public Safety**" that relate to matters that are within the jurisdiction or authority of the Department of Public Safety's Division of Homeland Security (R.C. 5503.031(B) and (D)(1)):

(1) It provides that the prohibitions described in paragraphs (1) and (2) under that part of this analysis do not apply to an investigation of a type described in that paragraph if any matter that is the subject of the investigation or to which the investigation relates is within the jurisdiction or authority of the Division of Homeland Security and one of the following applies: (a) as to the application of the prohibition described in paragraph (1), the official from whom approval to commence or continue the investigation must be obtained is the Director of Public Safety or the Executive Director of the Division, and (b) as to the application of the prohibition described in paragraph (2), the official who is authorized to direct, control, or manage the investigation is the Director of Public Safety or the Executive Director of the Division.

(2) It provides that the prohibition described in paragraph (3) under that part of this analysis does not apply to the enforcement of any laws referred to in paragraph (1) under that part of this analysis or an investigation of a type referred to in that paragraph if any matter that is the basis for the enforcement of the laws or that is the subject of the investigation or to which the investigation relates is within the jurisdiction or authority of the Division of Homeland Security and the restriction requires approval of the Director of Public Safety or the Executive Director of the Division before conferring with the Attorney General or any prosecuting authority.

(3) It provides that the prohibition described in paragraph (4) under that part of this analysis does not apply to the referral of any matter to a prosecuting authority if the matter is within the jurisdiction or authority of the Division of Homeland Security and

the official from whom approval to refer the matter must be obtained is the Director of Public Safety or the Executive Director of the Division.

### **Enforcement and application of the prohibitions**

The bill specifies that, on and after its effective date, no provision of an executive order, policy, rule, or practice that imposes a requirement, authorization, or restriction in violation of the ban described above in "**Prohibitions on executive orders, policies and practices, and rules of Governor's office and Department of Public Safety**" is enforceable. This no-enforcement provision applies to all executive orders, policies, rules, and practices of the type described in the preceding sentence, regardless of whether the executive order, policy, rule, or practice was issued, prescribed, or adopted prior to, on, or after the bill's effective date. (R.C. 5503.031(C).)

### **Definitions**

As used in the bill's prohibitions, exemptions, and provisions described in the preceding paragraph (R.C. 5503.031(D)): (1) "another official of the Department of Public Safety" does not include the Superintendent or any trooper of the State Highway Patrol, and (2) "policy, rule, or practice of the Department of Public Safety" includes any policy, rule, or practice of the Department issued, prescribed, or adopted pursuant to R.C. 5502.011 (see **COMMENT 5**) or pursuant to any other provision of law.

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## **COMMENT**

1. Existing R.C. 107.40(A) provides that the Governor's Residence Advisory Commission consists of 11 members. One member is the Director of Administrative Services or the Director's designee and is the chairperson. One member is the Director of the Ohio Historical Society or the Director's designee and is the vice-chairperson. One member represents the Columbus Landmarks Foundation, one represents the Bexley Historical Society, one is the Bexley Mayor, one is the Chief Executive Officer of the Franklin Park Conservatory Joint Recreation District, and the remaining five members are appointed by the Governor with the advice and consent of the Senate and must be persons with knowledge of Ohio history, architecture, decorative arts, or historic preservation, and one of those members must have knowledge of landscape architecture, garden design, horticulture, and plants native to this state. Members serve without remuneration but are compensated for actual and necessary expenses incurred in the performance of their official duties.

2. Existing law requires the Department of Rehabilitation and Correction (DRC) to establish work programs in some form of labor for as many prisoners as possible who are in its custody, subject to a few limited exceptions (R.C. 5145.16). It also requires

DRC to maintain the control over prisoners committed to its custody that prevents them from committing crime, secure their self-support, and accomplish their reformation (R.C. 5145.04, not in the bill).

DRC, subject to the approval of the Governor, is required to make any rules for the government of prisoners that tend to promote their reformation, or be necessary for the purpose of the law generally governing state correctional institutions, except that any rules that govern penal manufacturing and service industries and agriculture or labor performed by prisoners and that do not govern security must be adopted as described in the next paragraph. DRC must make provisions for the separation or classification of prisoners, their division into different grades with promotion or degradation according to merit or demerit, their instruction in industrial pursuits, and their education. (R.C. 5145.03(A), not in the bill.)

DRC's Director must adopt rules for the administration of DRC's program for employment of prisoners that is established as described in the second preceding paragraph. The rules must provide for specified matters, including: (1) a procedure for seeking the employment of prisoners in penal industries and agriculture, in private industry and agriculture located within or outside DRC's institutions, in public works, and in other appropriate forms of labor, (2) a system of compensation, allowances, hours, conditions of employment, and advancement for prisoners employed in any form of labor, (3) the regulation of the working conditions for prisoners employed in any form of labor, (4) the categorization of all jobs performed by prisoners into levels, grades within the levels, or other appropriate categories based upon the skills required to perform the job, the security required for the job, the location at which the job is performed, and any other relevant characteristics of the job, (5) a procedure for the periodic review of each prisoner's performance at his or her jobs and the periodic evaluation of the prisoner's qualifications for other jobs, (6) a procedure for the transportation of prisoners whenever necessary between institutions and to and from private industry or agriculture to perform jobs, (7) a disciplinary procedure for violations of work or security requirements, and (8) any other rules on any subject that are otherwise necessary to administer the work program or to provide employment for as many prisoners as possible. (R.C. 5145.03(B), not in the bill.)

DRC has adopted a series of rules that govern the employment of prisoners, which are contained in O.A.C. 5120-3-03, 5120-3-06, and 5120-3-07.

3. Regarding the history of prisoners working at the Governor's residence, a Report of Investigation of the State of Ohio Office of the Inspector General, File ID Number 2010037, dated April 29, 2010, states the following:

. . . Governor Michael DiSalle (1959-63), was the first Ohio governor to include inmates as members of the Governor's staff, employing prisoners from the Ohio Penitentiary as housemen, lawn care workers, chauffeurs and cooks. Historically, some Ohio governors even permitted inmates to live at the Governor's Residence, a practice that ended during the administration of Governor John Gilligan (1971-75). Gilligan also was the first Ohio governor to employ full-time security on the property.

Since 2004, midway through the administration of Governor Bob Taft (1999-2007), the Governor's Residence has offered an Apprenticeship Program in Horticulture exclusively to inmates at PCI in Orient. The initial class consisted of six inmates. Graduates of this program can become certified horticulturalists by passing the Ohio Landscape and Nursery Test, thereby better positioning themselves for employment upon their release from prison. Inmate apprentices at the Governor's Residence receive assistance in their efforts to re-enter society and find employment through the Transitional Educational Program run by Community Connection for Ohio Offenders, Inc., a private, non-profit agency in Columbus.

4. R.C. 5503.02, 5503.07, and 5503.34, not in the bill, expressly provide the State Highway Patrol with certain enforcement, investigative, and law enforcement duties and authority. A summary of the portions of those statutes that are relevant to the bill follows:

(a) R.C. 5503.02 provides that the Superintendent or any trooper of the Patrol may enforce the criminal laws on all state properties and state institutions, owned or leased by the state, and, when so ordered by the Governor in the event of riot, civil disorder, or insurrection, may, pursuant to the state's general arrest laws, arrest offenders against the criminal laws wherever they may be found within the state if the violations occurred upon, or resulted in injury to person or property on, state properties or state institutions, or under the conditions described in the next paragraph.

In the event of riot, civil disorder, or insurrection, or the reasonable threat of riot, civil disorder, or insurrection, and upon request in a specified manner of the sheriff of a county or the mayor or other chief executive of a municipal corporation, the Governor may order the Patrol to enforce the criminal laws within the area threatened by riot, civil disorder, or insurrection, as designated by the Governor, upon finding that law

enforcement agencies within the counties involved will not be reasonably capable of controlling the riot, civil disorder, or insurrection and that additional assistance is necessary. The Superintendent or any trooper may enforce the criminal laws within the area designated by the Governor during the emergency arising out of the riot, civil disorder, or insurrection until released by the Governor upon consultation with the requesting authority. Troopers never may be used as peace officers in connection with any strike or labor dispute. The Governor also may order the Patrol to undertake major criminal investigations that involve state property interests.

The Patrol must enforce state laws relating to the titling, registration, and licensing of motor vehicles; enforce on all roads and highways the laws relating to the operation and use of vehicles on the highways; enforce and prevent the violation of laws relating to the size, weight, and speed of commercial motor vehicles and laws designed for the protection of the highway pavements and structures on the highways; investigate and enforce rules and laws of the Public Utilities Commission governing the transportation of persons and property by motor carriers; enforce against any motor transportation company, contract carrier by motor vehicle, private motor carrier, and motor carrier the rules and laws that may result in a forfeiture under specified provisions of law; investigate and report violations of all laws relating to the collection of excise taxes on motor vehicle fuels; and regulate the movement of traffic on the roads and highways of the state. The Patrol, whenever possible, must determine the identity of, and arrest, persons who cause or are responsible for the breaking, damaging, or destruction of any improved surfaced roadway, structure, sign, marker, guardrail, or other appurtenance constructed or maintained by the Department of Transportation.

Troopers are required to investigate and report all motor vehicle accidents on all roads and highways outside of municipal corporations. The Superintendent or any trooper may arrest, without a warrant, any person, who is the driver of or a passenger in any vehicle operated or standing on a state highway, whom the Superintendent or trooper has reasonable cause to believe is guilty of a felony, under the same circumstances and with the same power that any peace officer may make such an arrest.

The Superintendent or troopers who are in a security detail providing security for the Governor, other specified government officials, the Capitol Square, or other state property have the same arrest powers as other peace officers to apprehend offenders against the criminal laws who endanger or threaten the security of any person being protected, no matter where the offense occurs. When providing security at the Capitol Square, they must enforce any rules governing Capitol Square adopted by the Capitol Square Review and Advisory Board.

(b) R.C. 5503.07 provides that, in addition to the powers and duties of the Patrol described above in **COMMENT** (4)(a) and subject to the limitations of R.C. 5503.01, a



trooper must arrest any person found committing a misdemeanor within the bounds of rest areas or roadside parks within the limits of the right-of-way of interstate highways and other state highways, or in violation of R.C. 5515.07 in other areas within the limits of the right-of-way of interstate highways.

(c) R.C. 5503.34 creates a Motor Carrier Enforcement Unit within the Patrol, to be administered by the Patrol's Superintendent. It is responsible for enforcement of commercial motor vehicle transportation safety, economic, and hazardous materials requirements. Employees of the Unit must cooperate with the Public Utilities Commission to enforce compliance with orders and rules of the Commission, applicable laws under R.C. Chapters 4919., 4921., and 4923., and any other applicable laws or rules. Uniformed employees of the Unit may stop commercial motor vehicles for the exclusive purpose of inspecting such vehicles to enforce compliance with orders and rules of the Commission as required by R.C. 5502.01(F).

5. R.C. 5502.011, not in the bill, provides certain authority and duties of the Director of the Department of Public Safety (as used in the section, "Department" include all divisions within the Department of Public Safety). In relevant part, it specifies that the Director is the chief executive and administrative officer of the Department. It authorizes the Director to establish policies governing the Department, the performance of its employees and officers, the conduct of its business, and the custody, use, and preservation of Departmental records, papers, books, documents, and property; and to authorize and approve investigations to be conducted by any of the Department's divisions. Whenever the Revised Code imposes a duty upon or requires an action of the Department, the Director may perform the action or duty in the name of the Department or direct such performance to be performed by the Director's designee.

The section specifies that, in addition to any other duties enumerated in the Revised Code, the Director or the Director's designee must perform several specified duties, including, relevant to the bill, the following: (a) administer and direct the performance of the duties of the Department, (b) approve, adopt, and prescribe such forms and rules as are necessary to carry out the duties of the Department, and (c) do all other acts necessary or desirable to carry out R.C. Chapter 5502.

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## HISTORY

### ACTION

### DATE

Introduced  
Reported, S. Judiciary - Criminal Justice

05-13-10  
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