



Ohio Legislative Service Commission

Bill Analysis

Laurel Mannion

H.B. 343

129th General Assembly
(As Introduced)

Reps. R. Hagan, Foley, Antonio, Gerberry, Pillich, Gentile, Fedor, Driehaus, Murray, Yuko

BILL SUMMARY

- Requires that each statewide elected official, General Assembly member, Supreme Court justice, and member of the JobsOhio board of directors submit to a controlled substance test before taking office or fulfilling an appointment and annually thereafter.
- Requires that each Troubled Asset Relief Program (TARP) recipient submit to an annual controlled substance test.
- Requires the Ohio Ethics Commission to adopt rules governing the controlled substance tests the bill requires.
- Requires that a state official or TARP recipient who has a controlled substance test failure be referred to an alcohol and drug addiction program certified by the Ohio Department of Alcohol and Drug Addiction Services.
- Provides that a state official who has a controlled substance failure may be subject to impeachment, removal, recall, or other sanctions, and that a member of the JobsOhio board of directors who has a controlled substance test failure must be removed.
- Establishes a process for recall of statewide officers and members of the General Assembly by qualified voters.

* Contains formatting corrections.

CONTENT AND OPERATION

Mandatory drug testing for certain state officials and TARP recipients

The bill requires that, before taking office or fulfilling an individual's appointment and once every year thereafter, statewide elected officials, members of the General Assembly, justices of the Supreme Court, and members of the board of directors of JobsOhio be subject to a controlled substance test to determine whether the official, member, justice, or director has a controlled substance test failure (see **COMMENT 1**). The costs of testing must be paid by the official, member, justice, or director.¹

Under the bill, a controlled substance test failure means that an individual is determined by a chemical test to have a concentration of any of the controlled substances specified in the law governing operating a motor vehicle under the influence of alcohol or drugs,² or metabolites of such a controlled substance, in the individual's urine that equals or exceeds any of the applicable levels established in that law. However, an individual may not be determined to have a controlled substance test failure if the individual obtained the controlled substance pursuant to a prescription issued by a licensed health professional authorized to prescribe drugs and the individual injected, ingested, or inhaled the controlled substance in accordance with the health professional's directions.³

In addition, Troubled Asset Relief Program (TARP) recipients are subject to an annual controlled substance test to determine whether the recipient has a controlled substance test failure.⁴ Under the bill, a TARP recipient is a an officer, executive, or corporate staff member of a financial institution that receives or has received TARP funding.⁵ The costs of testing are to be paid by the recipient.

¹ R.C. 102.10(B)(1).

² R.C. 4511.19 (not in the bill).

³ R.C. 102.10(A)(1).

⁴ R.C. 102.10(B)(2).

⁵ The Emergency Economic Stabilization Act of 2008 established TARP to enable the U.S. Department of the Treasury to promote stability in financial markets through the purchase and guarantee of troubled assets (Division A of Public Law 110-343, 12 United States Code 5201 et seq.).

The bill provides that refusal to submit to a controlled substance test required by the bill constitutes an admission that the official, member, justice, director, or recipient has a controlled substance test failure.⁶

Standards for testing

To be considered valid, any controlled substance test required by the bill must be performed according to rules adopted by the Ohio Ethics Commission that provide for the test to be conducted in a manner that assures a reasonable degree of dignity while reasonably preventing substitution or contamination of any specimen taken for the test. The rules also must provide for a manner in which the controlled substance test will be administered before the individual takes office or fulfills the individual's appointment, as applicable, and randomly, on a yearly basis.⁷

Effect of controlled substance test failure

If a statewide elected official, General Assembly member, or Supreme Court justice is determined to have a controlled substance test failure, the bill requires the Ohio Ethics Commission to refer the officer, member, or justice to an alcohol and drug addiction program certified by the Ohio Department of Alcohol and Drug Addiction Services.⁸ The official, member, or justice may also be subject to any of the following actions if the criteria for the action otherwise applies: impeachment, removal from office, recall—a process the bill establishes (described below), or any other sanction authorized by law or rule.

If a member of the JobsOhio board of directors is determined to have a controlled substance test failure, the member must be deemed to not fulfill the qualifications for the appointment to the board⁹ and must be removed by the Governor.

If a TARP recipient is determined to have a controlled substance test failure, the Ohio Ethics Commission must refer the recipient to a certified alcohol and drug addiction program.¹⁰

⁶ R.C. 102.10(D).

⁷ R.C. 102.10(C).

⁸ R.C. 102.10(E)(1) and 3793.06 (not in the bill).

⁹ R.C. 102.10(E)(2) and 187.02.

¹⁰ R.C. 102.10(E)(3).

Recall of statewide officers and members of the General Assembly

The bill establishes a process for recall of the Governor, Lieutenant Governor, Secretary of State, Auditor of State, Treasurer of State, or Attorney General by qualified voters of Ohio. It also authorizes qualified voters of a member's district to remove from office a member of the General Assembly (see **COMMENT 2**).¹¹

The bill specifies that the method of removing an officer under its provisions is in addition to other methods that are provided by law. For example, the Ohio Constitution authorizes the General Assembly to pass laws removing state officers and members of the General Assembly for any misconduct involving moral turpitude.¹²

Procedures to place a recall measure on the ballot

If the official whose removal is sought is a statewide officer, a petition demanding the election of a successor to that person must be filed. The petition must be signed by qualified electors equal in number to at least 15% of the total votes cast in Ohio for the office of Governor at the most recent election for that office. If the official whose removal is sought is not the Secretary of State, the petition must be filed with the Secretary of State. If the official whose removal is sought is the Secretary of State, the petition must be filed with the Governor, and the Governor must fulfill all duties of the Secretary of State with regard to that petition. If the official whose removal is sought is a member of the General Assembly, the petition must be filed with the board of elections of the most populous county in the district. It must be signed by qualified electors equal in number to at least 15% of the total votes cast in the respective district for the office of Governor at the most recent election for that office.¹³ The bill prohibits the filing of a petition seeking the removal of an official until the official has served for at least 90 days of the term during which the official is sought to be recalled.¹⁴

Regardless of whether the petition seeks the removal of a statewide officer or member of the General Assembly, it must contain a general statement of not more than 200 words of the grounds upon which removal is sought. The form and sufficiency of the petition must be determined according to the general election laws.¹⁵

¹¹ R.C. 3.11.

¹² Ohio Constitution, Article II, Section 38.

¹³ R.C. 3.11(B)(1).

¹⁴ R.C. 3.11(C).

¹⁵ R.C. 3.11(B)(2).

If the petition is sufficient, and if the official whose removal is sought does not resign within five days after the sufficiency of the petition has been determined, the question of removal of the official must appear on the ballot at the next general election or at a special election conducted on the day of the next primary election, if the date of that election is fewer than 150 days after the petition is filed. If the date of the next succeeding general election or primary election is 150 or more days after the petition is filed, a special election must be held to determine the question of the removal of the official, and for the selection of a successor to the official.

If the election is for the removal of a statewide officer, the Secretary of State or, if applicable, the Governor, must order and fix the day for the special election. If the election is for the removal of a General Assembly member, the board of elections of the most populous county in the member's district, after consultation with the board of elections of each county with territory in the district, must order and fix the day for the special election. The election must be held not less than 30 nor more than 40 days from the time of the finding of the sufficiency of the petition. The election authorities must publish notice and make all arrangements for holding the election, which must be conducted and the result returned and declared in the same manner as the results of regular elections for the applicable office.¹⁶

Nomination of candidates to succeed the official who is sought to be removed must be made, without a primary election, by filing a nominating petition with the election authorities at least 20 days before the election.¹⁷

Form of recall question on the ballot

The ballots at a recall election must submit the question: "Shall (name of person) be removed from the office of (name of office) by recall?"

Immediately following that question, the following two propositions must be printed on the ballots in the following order:

"For the recall of (name of person)."

"Against the recall of (name of person)."

Immediately to the left of the proposition must be placed a square in which the electors may vote for either proposition. Under that question must be placed the names

¹⁶ R.C. 3.11(B)(3).

¹⁷ R.C. 3.11(B)(4).

of candidates to fill the vacancy. The name of the official whose removal is sought may not appear on the ballot as a candidate to succeed the member's self.¹⁸

Results of recall election

In any recall election provided for under the bill, if a majority of the votes cast on the question of removal are affirmative, the official whose removal is sought is removed from office upon the announcement of the official canvass of that election, and the candidate receiving the plurality of the votes cast for candidates for that office must be declared elected. The successor of the removed officer holds office during the unexpired term of the removed officer. If the incumbent whose removal is sought is not recalled, the bill requires that the incumbent be repaid from the state treasury for actual and legitimate expenses for the election.¹⁹

COMMENT

1. The Fourth Amendment to the United States Constitution provides that "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated."²⁰ Article I, Section 14 of the Ohio Constitution provides similar protections.²¹ The United States Supreme Court has determined that compulsory administration of a blood, breath, or urine test is a search protected by the Fourth Amendment and therefore subject to the reasonableness requirement.²² To determine whether a particular search is reasonable, a court must balance the government's interest with the rights of the person to be searched.

To be reasonable under the Fourth Amendment, a search ordinarily must be based on individualized suspicion of wrongdoing.²³ Exceptions to the general rule of individualized suspicion are present when the Fourth Amendment intrusion serves special government needs, beyond the need for law enforcement.²⁴ On this basis, the

¹⁸ R.C. 3.11(B)(5).

¹⁹ R.C. 3.11(B)(6) and (C).

²⁰ U.S. Const. Amend. IV.

²¹ *State v. Robinette* (1997), 80 Ohio St.3d 234.

²² *Schmerber v. California*, 384 U.S. 757 (1966); *Skinner v. Railway Labor Executives' Ass'n*, 489 U.S. 602 (1989).

²³ *Chandler v. Miller*, 520 U.S. 305, 313 (1997), citing *Vernonia School Dist. 47J v. Acton*, 515 U.S. 646 (1995).

²⁴ *Skinner* at 617.

Supreme Court has sanctioned drug testing for railroad employees and U.S. Customs Service employees involved in drug interdiction.²⁵

One case of particular relevance is *Chandler v. Miller*.²⁶ In that case, the Supreme Court held unconstitutional a Georgia statute that subjected candidates seeking nomination for certain state offices to drug testing.²⁷ The Court found that Georgia did not have a "special need" to require drug testing as there was no evidence that Georgia had a particular problem of drug abuse among candidates, no indication that the method used would actually deter drug abuse among candidates, and no indication that public scrutiny of elected officials would not be sufficient to prevent drug abuse among officeholders.²⁸

2. Currently, Ohio law does not provide for recall elections, except for certain municipal offices.²⁹ There is no authority in the Ohio Constitution for a recall election. Since the Constitution provides other specific procedures for removing constitutional officers from office and does not authorize recall elections, it appears that the authority to conduct recall elections must be granted by an amendment to the Constitution rather than by statute.

HISTORY

ACTION	DATE
Introduced	10-12-11

H0343-I-corrected-129/ejs

²⁵ *Skinner* at 617 and *National Treasury Employees Union v. Von Raab*, 489 U.S. 656, 665 (1989).

²⁶ 520 U.S. 305 (1997).

²⁷ The designated state offices were: Governor, Lieutenant Governor, Secretary of State, Attorney General, State School Superintendent, Commissioner of Insurance, Commissioner of Agriculture, Commissioner of Labor, Justices of the Supreme Court, Judges of the Court of Appeals, judges of the superior courts, district attorneys, members of the General Assembly, and members of the Public Service Commission. *Chandler* at 310.

²⁸ *Chandler* at 318-322.

²⁹ R.C. 705.92.

