



# OHIO LEGISLATIVE SERVICE COMMISSION

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## Bill Analysis

Emily E. Wendel

### **Sub. H.B. 34**

132nd General Assembly

(As Reported by S. Government Oversight and Reform)

**Reps.** Hambley and Ryan, Wiggam, Greenspan, Blessing, Hill, Becker, Riedel, Goodman, Bishoff, Arndt, Anielski, Antani, Antonio, Ashford, Boyd, Carfagna, Conditt, Craig, Dever, Edwards, Faber, Fedor, Ginter, Green, Henne, Holmes, Howse, Huffman, Kick, Koehler, Landis, Lanese, LaTourette, Leland, Lepore-Hagan, Lipps, McColley, Miller, O'Brien, Patterson, Patton, Pelanda, Perales, Reineke, Rogers, Romanchuk, Scherer, Seitz, Sheehy, Slaby, K. Smith, R. Smith, Stein, Sweeney, Thompson, Vitale, West, Young

**Sen.** Coley

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## **BILL SUMMARY**

### **Notice by ordinary mail and Internet identifier of record**

- Authorizes state agencies, local governments, and certain boards, commissions, and officers to deliver certain official notices by ordinary mail and Internet identifier of record as an alternative to delivery by certified mail.

### **Public records training for public officials**

- Allows a person who has been elected to an office but has not yet taken office to complete the required public records training for elected officials conducted by the Attorney General before the person takes office.

### **County prosecuting attorney as legal adviser**

- Permits a county prosecuting attorney, in the attorney's discretion and with the approval of the board of county commissioners, to enter into a contract with a regional airport authority, port authority, or regional planning commission to be its legal adviser.
- Allows the county prosecuting attorney to charge a fee for legal services agreed to under the contract.

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## CONTENT AND OPERATION

### Notice by ordinary mail and Internet identifier of record

The bill provides, in several sections of Ohio law, that certain official notices may be provided by means of a combination of ordinary mail and "Internet identifier of record," which the bill defines as "an electronic mail address, or any other designation used for self-identification or routing in Internet communication or posting, provided for the purpose of receiving communication."<sup>1</sup> In most cases, current law authorizes only delivery by certified mail. With certain exceptions, the bill provides, as an alternative, that notice may be sent by ordinary mail and Internet identifier of record (see **COMMENT**). The following table indicates the instances under Ohio law the bill modifies to allow for this alternative method. The first column indicates the notice requirement and relevant Revised Code citation; the second indicates the allowable method of notice under current law; and the third indicates the allowable method under the bill.

Notice requirement	Method of notice under current law	Method of notice under the bill
State agency or political subdivision required to award contracts by competitive bidding must notify an apparent low bidder found not to be responsive and responsible of that finding and the reasons for the finding (R.C. 9.312)	Certified mail only	Alternatively, ordinary mail and Internet identifier of record
State agency must notify an employee recalled from layoff of an offer of reinstatement or reemployment (R.C. 124.327)	None specified	Either (1) certified mail or (2) ordinary mail and Internet identifier of record
9-1-1 planning committee must notify the applicable board of county commissioners, legislative authority of each municipal corporation, and board of trustees of each township in the applicable county of the committee's proposal and final plan on the implementation of a countywide 9-1-1 system, and of the committee's public meeting on the proposal (R.C. 128.07)	Certified mail only	Alternatively, ordinary mail and Internet identifier of record
Ohio History Connection must send notice to the owner of property added to the National Register of Historic Places (R.C. 149.30)	Certified mail only	Alternatively, ordinary mail

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<sup>1</sup> R.C. 9.312(D).



Notice requirement	Method of notice under current law	Method of notice under the bill
County board of zoning appeals must notify the holder of an authorized variance or conditional zoning certificate granted for the extraction of minerals of the board's intent to revoke the variance or certificate upon violation of a condition thereof and of the holder's right to a hearing (R.C. 303.14)	Certified mail only	Alternatively, ordinary mail and Internet identifier of record
Person must notify board of county commissioners of proposed construction or expansion of concentrated animal feeding facility (R.C. 307.204)	Certified mail only	Alternatively, ordinary mail
Board of county commissioners must notify a person who does not comply with the board's recommendations regarding the person's concentrated animal feeding facility of the board's intent to initiate mediation if the person remains out of compliance with the recommendations (R.C. 307.204)	Certified mail only	Alternatively, ordinary mail and Internet identifier of record
County board of alcohol, drug addiction, and mental health services that experiences a vacancy must notify the vacant member's original appointment authority of the vacancy (R.C. 340.02)	Certified mail only	Alternatively, ordinary mail and Internet identifier of record
The Director of Environmental Protection may issue an order to require a county or joint solid waste management district to receive out-of-district waste (R.C. 343.01)	Certified mail only	Alternatively, ordinary mail and Internet identifier of record
Person must notify board of township trustees of proposed construction or expansion of concentrated animal feeding facility (R.C. 505.266)	Certified mail only	Alternatively, ordinary mail
Board of township trustees must notify a person who does not comply with the board's recommendations regarding the person's concentrated animal feeding facility of the board's intent to initiate mediation if the person remains out of compliance with the recommendations (R.C. 505.266)	Certified mail only	Alternatively, ordinary mail and Internet identifier of record
Township board of zoning appeals must notify the holder of an authorized variance or conditional zoning certificate granted for the extraction of minerals of the board's intent to revoke the variance or certificate upon violation of a condition thereof and of the holder's right to a hearing (R.C. 519.14)	Certified mail only	Alternatively, ordinary mail and Internet identifier of record



Notice requirement	Method of notice under current law	Method of notice under the bill
County or municipal corporation issuing authority that intends to issue certain bonds must send notice to the Director of Agriculture and the Director of Development providing certain information about the nature of the bonds (R.C. 902.04)	Certified mail only	Alternatively, ordinary mail and Internet identifier of record
County auditor must notify an owner of agricultural land of the denial of the owner's application to place the land in an agricultural district and must notify eligible owner of land in an agricultural district who fails to file renewal application (R.C. 929.02)	Certified mail only	Alternatively, ordinary mail and Internet identifier of record
Board of township trustees or board of county commissioners that determines an application to enroll land into an agricultural security area is incorrect or incomplete, or that approves or rejects an application, must notify the applicant (R.C. 931.03)	Certified mail only	Alternatively, ordinary mail and Internet identifier of record
Supervisors of a soil and water conservation district must send notice to landowners that are adjacent to a proposed improvement (R.C. 940.20)	Certified mail only	Alternatively, ordinary mail and Internet identifier of record (the words "Legal Notice" must be in conspicuous typeface at the top of the notice)
Secretary of State and county board of elections must notify certain candidates for public office about campaign finance statement filing requirements (R.C. 3517.01 and 3517.11)	Certified mail only	Alternatively, ordinary mail and Internet identifier of record
County board of elections must send notice of a recount or contest for a local option election regarding certain liquor-related issues to the Superintendent of Liquor Control; board also must send notice of a final determination of a recount or contest to the Superintendent and the Liquor Control Commission (R.C. 4301.39)	Certified mail only	Alternatively, ordinary mail and Internet identifier of record
County auditor must send notice to the owner of property that is reentered to the tax list (R.C. 5713.082)	Certified mail only	Alternatively, ordinary mail and Internet identifier of record
County auditor must notify an owner of agricultural land who fails to file an application for land valuation for property tax purposes; must return an incorrect or incomplete application for valuation to the applicant; and	Certified mail only	Alternatively, ordinary mail and Internet identifier of record



Notice requirement	Method of notice under current law	Method of notice under the bill
must notify an unsuccessful applicant for a determination that land is devoted exclusively to agricultural use (R.C. 5713.31 and 5713.32)		
County board of revision must notify a complainant and the applicable property owner of the time and place of a hearing for the complaint regarding the property's valuation (R.C. 5715.19)	Certified mail only	Alternatively, ordinary mail and Internet identifier of record
County board of revision must notify a complainant and property owner of its decision regarding a valuation complaint (R.C. 5715.20)	Certified mail only	Alternatively, ordinary mail and Internet identifier of record
County board of revision must notify all persons who were parties to a property valuation hearing that the board's decision has been appealed (R.C. 5717.01)	Certified mail only	Alternatively, ordinary mail and Internet identifier of record (must file with the board of tax appeals an affidavit attesting that the board sent the notice)
County treasurer must send notice to the owner of record or all interested parties that a tax certificate is to be sold (R.C. 5721.30 and 5721.31)	Certified mail only	Alternatively, ordinary mail and Internet identifier of record
County treasurer must send notice to the owner of record or all interested parties that a tax certificate has been sold via public auction (R.C. 5721.32)	Certified mail only	Alternatively, ordinary mail and Internet identifier of record
County treasurer must send notice to the owner of record or all interested parties that a tax certificate has been sold via negotiated sale or transfer (R.C. 5721.33)	Certified mail only	Alternatively, ordinary mail and Internet identifier of record
Board of county commissioners that adopts a resolution to approve or reject an application for certification as a qualified energy project must send copies of the resolution to the owner of the facility seeking certification and to the Director of Development Services (R.C. 5727.75)	Certified mail only	Alternatively, ordinary mail and Internet identifier of record

## Public records training for public officials

The bill allows a future official – that is, a person who has been elected to a local or statewide nonjudicial office but has not yet taken office – to complete the required public records training for elected officials conducted by the Attorney General before



the person takes office. However, a future official may not send a designee to the training in the official's place, as an elected official who has taken office may do under continuing law.

Under the bill, the requirements concerning registration fees for future officials are the same as for current elected officials and their designees under continuing law. The Attorney General must not charge a future official any fee for attending the training, but if another public or private entity offers the training, the entity may charge a reasonable registration fee. A future official's public office may use public funds to pay the fee.<sup>2</sup>

### **County prosecuting attorney as a legal adviser**

The bill authorizes the county prosecuting attorney, in the prosecuting attorney's discretion and with the approval of the board of county commissioners, to enter into a contract with any of the following entities to be their legal adviser:

- A regional airport authority;<sup>3</sup>
- A port authority;<sup>4</sup>
- A regional planning commission.<sup>5</sup>

The contract may provide for the payment of a fee to the prosecuting attorney for legal services agreed to under the contract.<sup>6</sup>

In turn, the bill authorizes the board of trustees of a regional airport authority,<sup>7</sup> the board of directors of a port authority,<sup>8</sup> and a regional planning commission<sup>9</sup> to

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<sup>2</sup> R.C. 109.43 and 149.43.

<sup>3</sup> R.C. 309.09(I). Regional airport authorities are created under R.C. Chapter 308.

<sup>4</sup> R.C. 309.09(I). This includes a port authority created under R.C. 4582.02 by a municipal corporation, township, county, or any combination thereof, and a port authority created under R.C. 4582.22 by any of the aforementioned local governments in combination with any other political subdivisions.

<sup>5</sup> R.C. 309.09(J). Regional planning commissions are created under R.C. 713.21.

<sup>6</sup> R.C. 309.09(I) and (J).

<sup>7</sup> R.C. 308.061.

<sup>8</sup> R.C. 4582.021 and 4582.23.

<sup>9</sup> R.C. 713.21(E).



contract with the county prosecuting attorney, to obtain legal services from the prosecuting attorney.

All money received under a contract must be deposited into the prosecuting attorney's legal services fund. Moneys in that fund may be appropriated only to the prosecuting attorney for the purpose of providing legal services under the contract with a regional airport authority, port authority, or regional planning commission, as applicable.<sup>10</sup>

If the regional airport authority, port authority, or regional planning commission covers territory or a region in more than one county, the board of trustees, board of directors, or commission may choose the prosecuting attorney with whom it enters into such contract, with the approval of the board of county commissioners of that county.<sup>11</sup>

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## COMMENT

Due process<sup>12</sup> requires a person to receive appropriate notice before being deprived of a property or liberty interest. Specifically, procedural due process requires "notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." This is sometimes referred to as the "reasonableness under the circumstances test." Notice that does not meet this test may serve to invalidate the deprivation of the underlying interest.<sup>13</sup>

Several of the notice requirements changed by the bill encompass situations in which a government actor is moving to deprive a person of a property interest. For example, the bill authorizes a county treasurer to notify a property owner by ordinary mail and Internet identifier of record that the owner's property has been sold in a delinquent property tax certificate sale, which could result in the property's eventual foreclosure.<sup>14</sup> Thus, the bill might be challenged by a person arguing that notice by ordinary mail and Internet identifier of record may not satisfy procedural due process notice requirements.

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<sup>10</sup> R.C. 309.09(K).

<sup>11</sup> R.C. 309.09(I) and (J).

<sup>12</sup> U.S. Const., amend. XIV, sec. 1.

<sup>13</sup> *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 313 (1950).

<sup>14</sup> R.C. 5721.32 and 5721.33.



Whether a particular method of delivering notice satisfies due process depends on whether the notice satisfies the reasonableness under the circumstances test. For example, the Court disapproved the use of "notice by publication" in a newspaper and opined that sending a notice by ordinary mail would satisfy the test in a situation in which the names and addresses of recipients were known.<sup>15</sup> In a second, more recent case, the Court held that sending a notice by certified mail to a prison inmate satisfied the test, even though a prison employee signed for the mail and the inmate did not timely receive the notice.<sup>16</sup> But in a later case, the Court held that certified mail was insufficient to satisfy the test after the certified mailing was returned unclaimed. In that case, the Court held that a state must take additional steps to send notice to the recipient, for example, by resending the notice by ordinary mail.<sup>17</sup>

Ultimately, whether service by ordinary mail and Internet identifier of record is sufficient to pass constitutional muster depends largely on the circumstances of a particular situation. For example, if ordinary mail is returned to the sender and an "invalid address" message is received in response to email service, due process may require the local government or officer to take additional steps to attempt to serve notice on the intended recipient. But if the ordinary mail is not returned and the email is not rejected, a court may consider due process to be satisfied.

Additionally, current law, which generally requires these notices to be sent by certified mail, may also raise procedural due process issues in some circumstances, especially if a certified mailing is returned unclaimed.

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## HISTORY

ACTION	DATE
Introduced	02-07-17
Reported, H. State & Local Gov't	02-22-17
Passed House (94-0)	02-28-17
Reported, S. Gov't Oversight & Reform	06-27-18

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<sup>15</sup> *Mullane*, at 319.

<sup>16</sup> *Dusenbery v. United States*, 534 U.S. 161 (2002).

<sup>17</sup> *Jones v. Flowers*, 547 U.S. 220 (2006).

