



# OHIO LEGISLATIVE SERVICE COMMISSION

## Final Analysis

Emily E. Wendel

### Sub. H.B. 18

132nd General Assembly  
(As Passed by the General Assembly)

- Reps.** Pelanda and Retherford, Wiggam, Keller, Blessing, Koehler, Becker, Hambley, McColley, Goodman, Huffman, Dean, Scherer, Dever, Faber, Riedel, Green, Young, Gavarone, Kick, Rezabek, Ginter, Greenspan, Anielski, Arndt, Ashford, Conditt, Duffey, Hughes, Ingram, Lipps, Manning, O'Brien, Patmon, Patton, Perales, Reineke, Roegner, Rogers, Romanchuk, Ryan, Schaffer, Seitz, Sheehy, Slaby, R. Smith, Sprague, Stein, Sweeney, Thompson, West
- Sens.** Coley, LaRose, Beagle, Eklund, Hackett, Hoagland, Huffman, Kunze, Obhof, O'Brien, Oelslager, Peterson, Sykes, Terhar, Wilson, Yuko

**Effective date:** October 29, 2018

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## ACT SUMMARY

### Special primary elections

- Eliminates the requirement that the state hold a special primary election to replace a party's candidate for Congress if the special primary is uncontested.

### Convention and visitors' bureaus

- Authorizes an elected official of a county, township, or municipal corporation that has levied a hotel lodging excise tax, or the official's designee, also to serve on the board of trustees of a convention and visitors' bureau.
- Declares that, notwithstanding Ohio common law or any contrary statutory law, the simultaneous holding of those positions does not constitute the holding of incompatible offices or employment.

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\* This version updates the effective date and makes corrections within the section on Convention and visitors' bureaus.

- Specifies that the act does not prevent a municipal corporation or chartered county from adopting a more restrictive policy regarding the simultaneous holding of those positions.
- Requires county auditors, municipal fiscal officers, and their employees, upon request, to share lodging tax return information with the convention and visitors' bureaus operating in their counties.

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## **CONTENT AND OPERATION**

### **Special primary elections**

The act eliminates the requirement of holding a special primary election to replace a party's candidate for Congress if the special primary is uncontested. Under continuing law, if the sole candidate in an uncontested congressional primary race dies or withdraws before the primary, the state must hold a special election to nominate that party's candidate for Congress and also to nominate the candidate of any other major political party that does not have a candidate for that office.

When the special primary is held, the act clarifies that the Secretary of State must designate the deadlines for filing declarations of candidacy and declarations of intent to be a write-in candidate for the special primary, since the usual deadlines do not apply in that situation. And, under the act, if only one person, or no one, has filed a valid declaration of candidacy, then no special primary is held, and the sole candidate, if there is one, automatically receives the nomination.

Similarly, continuing law requires the state to hold a special primary election if a party's congressional candidate dies or withdraws after the primary but before the 90th day before the general election. The act requires the Secretary of State to designate the deadlines for filing declarations of candidacy and declarations of intent to be a write-in candidate for the special primary. And, under the act, if only one person, or no one, has filed a valid declaration of candidacy, then no special primary is held, and the sole candidate, if there is one, automatically receives the nomination.<sup>1</sup>

### **Convention and visitors' bureaus**

#### **Who may serve on board of trustees**

The act provides that an elected official of a county, township, or municipal corporation that has levied a hotel lodging excise tax, or the official's designee, may also

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<sup>1</sup> R.C. 3513.301 and 3513.312.



serve as a member or officer of the board of trustees of a convention and visitors' bureau. (A convention and visitors' bureau is a private nonprofit corporation that may receive public funds appropriated by local governments and may benefit from the levy of a hotel lodging excise tax.) However, a municipal corporation or a chartered county may adopt, under the constitutionally granted home rule authority, a more restrictive policy regarding the simultaneous holding of those positions.

The act declares that holding those two positions does not constitute the simultaneous holding of incompatible offices, despite Ohio common law (the law arising from past court decisions) or any Ohio statute indicating anything to the contrary.<sup>2</sup>

The Ohio Attorney General has issued numerous formal opinions determining whether certain offices or positions are compatible with each other and has developed specific tests, based on common law, that apply in making a compatibility determination.<sup>3</sup> The Attorney General has determined that the position of member or officer of the board of trustees of a convention and visitors' bureau is incompatible with the positions of county auditor and county commissioner, presenting an impermissible conflict of interest that cannot be sufficiently avoided or eliminated to allow the simultaneous holding of the positions.<sup>4</sup> The act supersedes those opinions and the common law tests as applied to those specific positions.

### **Access to lodging tax information**

Under the act, upon request, a county auditor or municipal fiscal officer, or an employee of either, must share a hotel's lodging tax return information with the executive director of a convention and visitors' bureau operating in the county. Continuing law generally prohibits a county auditor from releasing tax return

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<sup>2</sup> R.C. 3.111 and Ohio Const., art. XVIII, sec. 3 and art. X, sec. 3. See also R.C. 731.02 (members of the legislative authority "shall not hold any other public office") and 731.12 ("No member . . . shall hold any other public office. . ."), not in the act.

<sup>3</sup> A five-question test is used to determine whether a person may hold simultaneously a public position and a private position. See 2012 Op. Att'y Gen. No. 2012-040. A seven-question test is used when examining two public positions. 1979 Op. Att'y Gen. No. 79-111. All of the questions must yield answers in favor of compatibility in order to find that the two positions are compatible. See also Ohio Attorney General, *Compatibility of Public Offices or Positions*, available at <https://www.ohioattorneygeneral.gov/About-AG/Service-Divisions/Opinions/Compatibility-of-Public-Offices-or-Positions>.

<sup>4</sup> 2017 Op. Att'y Gen. No. 2017-036; and 2018 Op. Att'y Gen. No. 2018-003. All Attorney General opinions issued since 1993 are available at <https://www.ohioattorneygeneral.gov/About-AG/Service-Divisions/Opinions>.



information to private parties unless specifically authorized in law to do so. There is no similar restriction in state law on municipal fiscal officers.<sup>5</sup>

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## HISTORY

ACTION	DATE
Introduced	02-01-17
Reported, H. Gov't Accountability & Oversight	03-29-17
Passed House (92-1)	04-25-17
Reported, S. Gov't Oversight & Reform	06-27-18
Passed Senate (32-0)	06-27-18
House concurred in Senate amendments (68-24)	06-27-18

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<sup>5</sup> R.C. 5715.49, 5715.50, and 5739.081.

