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OHIO LEGISLATIVE SERVICE COMMISSION

Office of Research
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Legislative Budget
Office

H.B. 397*
134th General Assembly

Bill Analysis

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Version: As Reported by Senate Agriculture and Natural Resources

Primary Sponsors: Reps. Stewart and Kick

Carla Napolitano, Attorney, and various other LSC staff

SUMMARY

Termination of agricultural leases

- Requires an agricultural lease agreement to be terminated by written notice from the lessor to the lessee unless the lease agreement contains a termination date or method for providing notice of termination.
- Requires notice to terminate an agricultural lease agreement to be given by September 1, in the year it is to be effective, and sets the termination date after notice as the date harvesting is complete or December 31 of the year notice is given, whichever comes first.

Soil and water conservation district officer and employee liability

- Expands the options that boards of soil and water conservation districts have for employees and officers entrusted with funds to additionally allow the boards to provide insurance policies for these employees, in addition to the continuing option of executing surety bonds.

Investing in Ohio Fund

- Creates the Investing in Ohio Fund, to promote economic development throughout Ohio.
- Appropriates \$85 million in FY 2022 to the new fund.

* This analysis was prepared before the report of the Senate Agriculture and Natural Resources Committee appeared in the Senate Journal. Note that the legislative history may be incomplete.

Oil and gas unit operation timelines

- Establishes timelines within which the Chief of the Division of Oil and Gas Resources Management must hold a hearing on an application for unit operation and issue the unit operation order.

Ohio Public Works Commission

- Makes various changes to the law governing the Ohio Public Works Commission (OPWC), including:
 - Removing the requirement that the private sector voting member of the OPWC with public finance experience have eight years of experience in public finance prior to appointment;
 - Clarifying that a quorum for the OPWC is four voting members instead of four members; and
 - Removing obsolete language requiring the OPWC to administer the now defunct Small Counties Capital Improvement Program.
- Makes various changes to the law governing grants awarded by natural resources assistance councils to eligible entities for specified natural resources projects, including:
 - Requiring a nonprofit organization that wishes to receive grant funding to be an environmental and conservation organization and formed to protect the natural environment in addition to being exempt from federal income taxation;
 - Clarifying that money may be awarded to an eligible conservation open space acquisition project for open space improvements, rather than open space developments as in current law;
 - Eliminating the restrictions against funding hydromodification projects, such as dams, dredging, and sedimentation; and
 - Specifying that technical assistance provided by the OPWC to natural resources assistance councils does not constitute approval or denial of a grant application.

Battery-charged fences

- Makes an exemption to the law regarding battery-charged fences for certain fences used for agricultural purposes.

Fairfield County land conveyance

- Authorizes the conveyance of state-owned land to the board of commissioners of Fairfield County at a price acceptable to the Director of Administrative Services and the Ohio University Board of Trustees.

DETAILED ANALYSIS

Termination of agricultural leases

The bill amends the law for termination of agricultural lease agreements by requiring the landlord to give the tenant written notice of termination, unless the agreement provides a termination date or method for providing notice of termination. Written notice provided under the bill's provisions must be delivered by September 1, in the year the termination is to be effective, by personal delivery, fax, or email. This notice of termination is effective either on the date harvesting is complete, or December 31 of the year the notice is given, whichever comes first.¹

The Statute of Frauds and Statute of Conveyances

The bill's termination provisions relate to existing law that is not contained in the bill. Chapter 1335 of the Revised Code, more commonly known as "the Statute of Frauds" has two applicable provisions:

- A provision requiring all interests in land, including leases, to be granted in writing;
- A provision prohibiting lawsuits involving interests in land, including leases, unless the interest is granted in writing.

A related statute, commonly known as "the Statute of Conveyances" requires leases to be signed by the lessor (generally the owner who leases the land to another) and requires the lessor's signature to be acknowledged before a notary public or other suitable official.²

Despite these statutory rules, under longstanding precedent, an oral agreement, including an oral agreement to lease agricultural land, can fall outside of the Statute of Frauds or Statute of Conveyances. Specifically, the parties' conduct can demonstrate the existence of an enforceable agreement, even if no written contract exists.³ The bill states that its provisions are applicable notwithstanding the requirements in the Statute of Frauds, but that it does not affect the requirements of the Statute of Conveyances.⁴

Definitions for termination of agricultural leases

As used in the bill's provisions regarding termination of agricultural leases:

- **Agricultural lease agreement** means an agreement or lease, whether written or oral, that establishes or modifies the terms, conditions, rules, or other provisions between a

¹ R.C. 5301.71(B).

² R.C. 1335.04, 1335.05, and 5301.01, not in the bill.

³ See, e.g., *Checkers Pub, Inc. v. Sofios*, 2016-Ohio-6963 (6th Dist. Ct. App.) and *Martin v. Jones*, 2015-Ohio-3168 (4th Dist. Ct. App.).

⁴ R.C. 5301.71(B)(1) and (C).

landlord and tenant concerning the use and occupancy of real property by one of the parties for agricultural purposes.

- **Agricultural purposes** means the use and occupancy of real property for the planting, growing, and harvesting of crops and all practices necessary for that planting, growing, and harvesting. Agricultural purposes *does not* mean the use and occupancy of real property for pasture, timber, farm buildings, horticultural buildings, or leases solely for equipment.
- **Landlord** means the owner or lessor of real property used for agricultural purposes that is authorized to receive remuneration from a tenant under an agricultural lease agreement, and that has entered into, or has actual or constructive knowledge of, an agricultural lease agreement.
- **Tenant** means the person entitled under an agricultural lease agreement to use real property for agricultural purposes to the exclusion of all others.⁵

Soil and water conservation district employee liability

Under current law, boards of supervisors for soil and water conservation districts are required to provide for the execution of surety bonds for employees and officers entrusted with funds. The bill amends this requirement by instead requiring the board to either:

- Provide for the execution of surety bonds for employees and officers entrusted with funds (as under current law);
- By resolution, adopt a policy to allow for use of an employee dishonesty and faithful performance of duty insurance policy to cover financial or property loss caused by the fraudulent or dishonest actions of, and the failure to perform a duty prescribed by law for, an officer, employee, or appointee that is otherwise required by law to give an individual surety bond before entering upon the discharge of official duties.⁶

Investing in Ohio Fund

The bill creates the Investing in Ohio Fund and requires the fund to be used to promote economic development throughout Ohio, including infrastructure improvements. The bill also appropriates \$85 million in FY 2022 to the fund from the GRF. Any unspent, unencumbered amount remaining at the end of FY 2022 is reappropriated to FY 2023.⁷

Oil and gas unit operation timelines

Unitization is the process by which an oil and gas driller, seeking to develop oil or gas resources, applies to the Chief for a unitization order to obtain control over all the mineral

⁵ R.C. 5301.71(A).

⁶ R.C. 940.05(F).

⁷ R.C. 126.62; Sections 201.10, 209.10, 228.10, and 229.10.

rights underlying a large area of land. The ultimate goal of unitization is to create an area of consolidated mineral rights that is large enough and that best suits the shape of an underground oil or gas reservoir to make the most efficient use of those resources. A person who has obtained the consent of the owners of at least 65% of the land area over the reservoir may submit an application for unit operation to the Chief of the Division of Oil and Gas Resources Management. The Chief also may make a motion for unit operation on the Chief's behalf.

The bill requires the Chief to hold a hearing on the application for a unit operation order not later than 60 days after the receipt of that application (or 60 days after the Chief's own motion, as applicable), unless the Chief determines the application is materially incomplete before the required hearing date. In that circumstance, the Chief must notify the applicant that the application is materially incomplete. The applicant must correct the application not later than three business days after receipt of the notice. If the applicant does not timely respond, the Chief may reschedule the date of the hearing.

The bill requires the Chief to issue the unit operation order not later than 60 days after the hearing, unless the application or motion is denied by the Chief in that 60-day time period.⁸

Current law does not specify a deadline by which the Chief must take any of the actions described above.

Ohio Public Works Commission

The bill makes various changes to the law governing the Ohio Public Works Commission (OPWC). It removes the requirement that the private sector voting member of the OPWC with public finance experience have eight years of experience in public finance prior to appointment. It also clarifies that a quorum for the OPWC is four *voting* members instead of four members.

The bill also removes obsolete language requiring the OPWC to administer the now defunct Small Counties Capital Improvement Program. Under current law, the OPWC Director must administer the program, which provides financial assistance to county governments of counties with less than 85,000 residents. Under the program, the Director must review and may approve projects submitted by subcommittees of district public works integrating committees. However, the program has not been funded since 2003 and is now defunct. The bill also repeals corresponding obsolete language that requires, during program years 12 and 14, two million dollars each program year to be allocated to the program if the obligations are authorized and available for allocation.⁹

⁸ R.C. 1509.28.

⁹ R.C. 164.02, 164.05, 164.06, and 164.08.

Natural resources assistance councils

Background

Natural resource assistance councils are appointed by district public works integrating committees to represent each area of Ohio. The purpose of each council is to oversee the issuance of grants funded via the Clean Ohio Program for environmental conservation, including acquisition of green space and the protection and enhancement of river and stream corridors. Upon selection of a grant proposal submitted by a local political subdivision or an eligible nonprofit organization, a council must submit its recommendations to the OPWC Director for further consideration.¹⁰

Nonprofit organization funding

As indicated above, an eligible nonprofit organization may receive approval for project funding from a natural resources assistance council. The bill specifies that the nonprofit organization must be an environmental and conservation organization that is exempt from federal income taxation and formed to protect the natural environment. Under current law, such an organization must be exempt from federal income taxation and must focus at least one of its designated activities on the purposes for which Clean Ohio Program grants may be issued.¹¹

Additional funding specifications and technical assistance

The bill also does the following regarding natural resources assistance councils:

1. Clarifies that a council may award money to an eligible conservation open space acquisition project for open space *improvements*, rather than open space *developments* as in current law.
2. Eliminates the restrictions against funding hydromodification projects, such as dams, dredging, and sedimentation¹²; and
3. Specifying that technical assistance provided by the OPWC to natural resources assistance councils does not constitute approval or denial of a grant application.¹³

Battery-charged fences

The bill makes an exemption to the law regarding battery-charged fences for certain fences used for agricultural purposes. Existing law requires battery-charged fences that are located on private property in nonresidential zones to meet certain safety standards. Under the law, a battery-charged fence must:

¹⁰ R.C. 164.22.

¹¹ R.C. 164.20.

¹² R.C. 164.22.

¹³ R.C. 164.26.

- Be connected to a monitored alarm system;
- Have an energizer that meets the standards set forth by the International Electrotechnical Commission;
- Be completely surrounded by a nonelectric perimeter fence or wall at least five feet tall;
- Be no taller than the higher of either ten feet, or two feet higher than the height of the nonelectric perimeter fence or wall; and
- Be marked with conspicuous warning signs, no more than 40 feet apart, that read “WARNING—ELECTRIC FENCE.”

The law exempts several types of fences from the safety provisions, including fences keeping livestock off of railroads, preferred partition fences for livestock, fences constructed by the federal government, the state, or a political subdivision (prisons, for example), and fences at zoos and wildlife sanctuaries. The bill exempts partition fences, as opposed to preferred partition fences, for livestock are exempt. The bill also adds that fences constructed and used for agricultural purposes are also exempt from these safety provisions.¹⁴

Fairfield County land conveyance

The bill authorizes the conveyance of state-owned land to the board of commissioners of Fairfield County at a price acceptable to the Director of Administrative Services and the Ohio University Board of Trustees, with the proceeds being deposited into university accounts. The authorization is for two tracts totaling approximately 5.5 acres in Fairfield County under the control of Ohio University, and the conveyance follows the standard process for public land conveyances. The authorization expires three years after the bill’s effective date.¹⁵

HISTORY

Action	Date
Introduced	08-24-21
Reported, H. Agriculture & Conservation	12-08-21
Passed House (89-2)	12-08-21
Reported, S. Agriculture and Natural Resources	---

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¹⁴ R.C. 3781.1011.

¹⁵ Section 3.