



www.lsc.ohio.gov

# OHIO LEGISLATIVE SERVICE COMMISSION

Office of Research  
and Drafting

Legislative Budget  
Office

S.B. 21

135<sup>th</sup> General Assembly

## Final Analysis

[Click here for S.B. 21's Fiscal Note](#)

**Primary Sponsors:** Sens. McColley and Reynolds

**Effective date:** September 29, 2023

Nicholas A. Keller, Attorney

Emily E. Wendel, Attorney

## SUMMARY

### Appeals of administrative orders

- Modifies the Administrative Procedure Act regarding appeals by a party adversely affected by an order of an agency by doing all of the following:
  - Allowing an adversely affected party to appeal to the common pleas court in the county where a licensee's place of business is located or where the licensee is a resident, in lieu of appealing to the Franklin County Court of Common Pleas;
  - Requiring, instead of permitting, appeals from orders of the State Fire Marshal be to the common pleas court of the county in which the aggrieved person's building is located;
  - Requiring, instead of permitting, that appeals from specified administrative orders by any party who is not a resident of and has no place of business in Ohio be to the Franklin County Court of Common Pleas;
  - Allowing a party adversely affected by an agency's order to appeal to the common pleas court in the county in which the business of the party is located or in which the party is a resident in lieu of appealing to the Franklin County Court of Common Pleas.
- Modifies statutes governing adjudication orders of specified agencies to replace prior law regarding appeals of the orders to the Franklin County Court of Common Pleas, the Environmental Division of the Franklin County Municipal Court, or the court of the county in which an appointing authority resides, with the act's venue provision described above.

### Special court procedures

- Provides special court procedures regarding the consideration and determination of:

- Cases that, prior to September 29, 2023, would have been solely within the jurisdiction on appeal of the 10<sup>th</sup> District Court of Appeals, and that on that date are pending in a common pleas court and are not pending in the 10<sup>th</sup> District.
- Matters that, on or after September 29, 2023, are being considered by a court of appeals other than the 10<sup>th</sup> District or a common pleas court within the territory of a court of appeals other than the 10<sup>th</sup> District and that, prior to September 29, 2023, would have been solely within the jurisdiction on appeal of the 10<sup>th</sup> District.

### **No claim preclusion in zoning appeals**

- Provides that a final judgment on the merits by a court pursuant to its power of review of administrative orders on claims brought under the law regarding county rural zoning or the renewal of slums and blighted areas in a county, the Township Zoning Law, or the law regarding municipal zoning, regional and county planning commissions, or interstate regional planning commissions does not preclude later claims for damages.
- States that the General Assembly intends that the above provisions in the respective laws be construed to override the federal Sixth Circuit Court of Appeals decision in the case of *Lavon Moore v. Hiram Twp.*, 988 F.3d 353 (6<sup>th</sup> Cir. 2021).

### **State involvement in legal actions**

- Specifies that the General Assembly and each chamber may intervene as a matter of right at any time in any civil action or proceeding in state or federal court that involves a challenge to the validity, applicability, or constitutionality of the Ohio Constitution or the laws of Ohio.
- Creates exceptions to the law that requires the Attorney General to represent a state agency in any legal action.
- Allows the Speaker of the House and the Senate President to retain their own legal counsel to represent the House, the Senate, or the General Assembly.
- Allows the Governor to retain separate legal counsel in any matter, action, or proceeding the Governor deems to be necessary and proper to protect the interests of the Office of the Governor.

### **Hamilton County Drug Court jurisdiction**

- Allows the Hamilton County Municipal Court to refer a case to the Drug Court of the Hamilton County Court of Common Pleas if the case is eligible for admission to the Drug Court under a local rule adopted by the Hamilton County Common Pleas Court.
- Provides that a local rule may not permit referral of a case to the Drug Court if the case involves a first or second degree felony, a sex offense that is a third degree felony, or aggravated murder or murder.

## Jurisdiction of Tiffin-Fostoria Municipal Court

- Transfers Perry Township in Wood County from the territorial jurisdiction of the Tiffin-Fostoria Municipal Court to the territorial jurisdiction of the Bowling Green Municipal Court, effective January 2, 2024.
- Transfers Washington Township in Hancock County from the territorial jurisdiction of the Tiffin-Fostoria Municipal Court to the territorial jurisdiction of the Findlay Municipal Court, effective January 2, 2024.

## Sandusky County County Court judgeship

- Effective January 2, 2025, replaces the two part-time judges in the Sandusky County County Court with one full-time judge, to be elected in 2024, term to commence on January 2, 2025.
- Requires that, effective January 2, 2025, the compensation of the full-time judge of the Sandusky County County Court be the same as the compensation of a full-time municipal court judge.
- Removes all references in relevant statutes to “Sandusky County Municipal Court.”

---

## TABLE OF CONTENTS

|                                                                       |    |
|-----------------------------------------------------------------------|----|
| Appeal of administrative agency order .....                           | 4  |
| Appeal from order of specific agencies.....                           | 5  |
| Special court procedures .....                                        | 7  |
| No claim preclusion in zoning appeals.....                            | 7  |
| State involvement in legal actions .....                              | 8  |
| Intervention by the General Assembly or the Governor .....            | 8  |
| Special counsel .....                                                 | 8  |
| General Assembly.....                                                 | 8  |
| Governor.....                                                         | 9  |
| Hamilton County Drug Court jurisdiction .....                         | 10 |
| Jurisdiction of Tiffin-Fostoria Municipal Court .....                 | 10 |
| Bowling Green Municipal Court – Perry Township in Wood County.....    | 10 |
| Findlay Municipal Court – Washington Township in Hancock County ..... | 11 |
| Sandusky County County Court judges.....                              | 11 |

---

---

## DETAILED ANALYSIS

The contents of S.B. 21 were also enacted in identical form as part of the most recent main operating budget act, H.B. 33 of the 135<sup>th</sup> General Assembly. Those provisions of H.B. 33 take effect October 3, 2023, but S.B. 21 takes effect September 29, 2023.<sup>1</sup>

### **Appeal of administrative agency order**

The act provides that a party adversely affected by an order of an agency issued pursuant to an adjudication may appeal from the order to the court of common pleas of the county designated as follows:<sup>2</sup>

1. Except as otherwise described below in (2), an appeal from an order of an agency issued pursuant to an adjudication denying an applicant admission to an examination, denying the issuance or renewal of a license or registration of a licensee, revoking or suspending a license, or allowing the payment of a forfeiture rather than suspending operations of a liquor permit holder by order of the Liquor Control Commission must be filed in the county in which the place of business of the licensee is located or the county in which the licensee is a resident (prior law states that such an appeal may be filed in the court of common pleas in either of the specified counties).

2. An appeal from an order issued by any of the following agencies must be made to the Franklin County CCP or the court of common pleas in the county in which the place of business of the licensee is located or the county in which the licensee is a resident: (a) Liquor Control Commission, (b) Ohio Casino Control Commission, (c) State Medical Board, (d) State Chiropractic Board, (e) Board of Nursing, and (f) Bureau of Workers' Compensation regarding participation in the health partnership program administered by the Bureau (under prior law, such an appeal must be made to the Franklin County CCP).

3. Appeals from orders of the State Fire Marshal issued under R.C. Chapter 3737 must be to the court of common pleas of the county in which the building of the aggrieved person is located (under prior law, those appeals may be to that court of common pleas or to the Franklin County CCP).

4. As under continuing law, appeals under R.C. 124.34(B) from a decision of the State Personnel Board of Review or a municipal or civil service township civil service commission must be taken to the court of common pleas of the county in which the appointing authority is located or, in the case of an appeal by DRC, to the Franklin County CCP.

---

<sup>1</sup> For more information, see LSC's final analysis of [H.B. 33 of the 135<sup>th</sup> General Assembly \(PDF\)](#), pp. 69-72 and 399-405, which is available on the General Assembly's website: [legislature.ohio.gov](http://legislature.ohio.gov), under "Search Legislation" via a keyword search for "HB33."

<sup>2</sup> R.C. 119.12(A) and (B).

5. If a party appealing from an order described above in (1) or (2) or described below in (6) is not an Ohio resident and has no place of business in Ohio, the party must appeal to the Franklin County CCP (prior law states that such an appeal may be to the Franklin County CCP).

6. A party adversely affected by any order of an agency issued pursuant to any other adjudication may appeal to the Franklin County CCP or the court of common pleas of the county in which the business of the party is located or in which the party is a resident (under prior law, the party may appeal to the Franklin County CCP).

### **Appeal from order of specific agencies**

The act's provision above that a party adversely affected by an order of an agency may appeal from the order to the court of common pleas of the county in which the place of business of the party is located or the county in which the party is a resident is expressly made applicable to any of the following appeals:

- In cases of removal or reduction in pay for disciplinary reasons, the appointing authority or the officer or employee in the classified service may appeal from the decision of the State Personnel Board of Review or the municipal civil service commission of the city or city school district. The act replaces prior law that provides for the appeal to be made to the court of common pleas of the county in which the appointing authority is located, or to the Franklin County CCP.<sup>3</sup>
- In cases in which the Director of Agriculture or a designated representative impounds and seizes a dog from a high volume breeder or dog broker for violation of applicable law or rule, the high volume breeder's owner or operator or the person acting as a dog broker may appeal from such determination at an adjudication hearing. The act replaces the prior provision that specifies that the appeal may be made only to the environmental division of the Franklin County Municipal Court.<sup>4</sup>
- In cases in which an application for a license as a high volume breeder or dog broker is denied or such license is suspended or revoked upon a determination of the Director of Agriculture at an adjudication hearing, the applicant or licensee may appeal from such determination. The act replaces the prior provision that specifies that the appeal may be made only to the environmental division of the Franklin County Municipal Court.<sup>5</sup>
- In cases in which a proprietor of a public place or place of employment or an individual against whom a finding of a violation of any prohibition under the Smoking Ban Law is made by the Director of the Department of Health or designee, the proprietor or

---

<sup>3</sup> R.C. 124.34(B).

<sup>4</sup> R.C. 956.11(C).

<sup>5</sup> R.C. 956.15(C).

individual may appeal the finding. The act replaces prior law that provides that the proprietor or individual may appeal the finding to the Franklin County CCP.<sup>6</sup>

- In cases in which, after a public hearing, the Superintendent of Insurance issues an order of disapproval of any merger or other acquisition of control of a domestic insurer, the order may be appealed by filing a notice of appeal with the Superintendent and a copy of the notice of appeal with the court that will hear the appeal, within 15 calendar days after the transmittal of the copy of the order. The act replaces prior law that specifies that the order of disapproval may be appealed to the Franklin County CCP.<sup>7</sup>
- In cases in which the Superintendent of Insurance issues an order regarding the conversion of a domestic mutual life insurance company to a stock life insurance company, an adversely affected policyholder may appeal the order. The act replaces prior law that provides that a policyholder adversely affected by such order may appeal to the Franklin County CCP.<sup>8</sup>
- In cases in which the Superintendent of Insurance issues an order regarding the conversion of a domestic mutual insurance company other than life to a stock insurance corporation other than life, an adversely affected policyholder may appeal the order. The act replaces prior law that provides that a policyholder adversely affected by such order may appeal to the Franklin County CCP.<sup>9</sup>
- In cases in which an appellant who appeals an order of an agency administering a family services program, who is granted a state hearing, and who disagrees with the state hearing decision and generally makes an administrative appeal to the Department of Job and Family Services (JFS), the appellant may appeal from the JFS administrative appeal decision. The act replaces prior law that provides that the person may appeal to the court of common pleas of the county in which the person resides, or to the Franklin County CCP if the person does not reside in Ohio. The act's new venue provision described above and continuing law on an appeal by a nonresident to the Franklin County CCP would apply, and the eliminated provision regarding a nonresident would be duplicative.<sup>10</sup>
- In cases in which an adversely affected party may appeal from the Medicaid Department's adjudication order regarding: (1) refusal to enter into a provider agreement with a Medicaid provider, (2) refusal to revalidate a Medicaid provider's provider agreement, (3) suspension or termination of a Medicaid provider's provider

---

<sup>6</sup> R.C. 3794.09(C).

<sup>7</sup> R.C. 3901.321(F)(2)(e).

<sup>8</sup> R.C. 3913.13 and by reference to R.C. 3913.11(F), which is not in the act.

<sup>9</sup> R.C. 3913.23 and by reference to R.C. 3913.21(F), which is not in the act.

<sup>10</sup> R.C. 5101.35(E).

agreement, or (4) taking any action based upon a final fiscal audit of a Medicaid provider. The act replaces prior law that provides that any party who is adversely affected by the issuance of any such adjudication order may appeal to the Franklin County CCP.<sup>11</sup>

## Special court procedures

Related to the provisions described above, the act specifies that:<sup>12</sup>

1. All cases pending in the 10<sup>th</sup> District Court of Appeals on September 29, 2023, that were appropriately filed in that court are to be adjudicated by the 10<sup>th</sup> District;

2. All cases that, prior to September 29, 2023, would have been solely within the jurisdiction on appeal of the 10<sup>th</sup> District Court of Appeals, and on that date are pending in a common pleas court that is an appropriate venue and are not pending in the 10<sup>th</sup> District, are to be adjudicated by that common pleas court and remain solely within the jurisdiction on appeal of the 10<sup>th</sup> District, on and after September 29, 2023;

3. If, on or after September 29, 2023, a court of appeals other than the 10<sup>th</sup> District Court of Appeals or a common pleas court within the territory of a court of appeals other than the 10<sup>th</sup> District is considering a matter that, prior to September 29, 2023, would have been solely within the jurisdiction on appeal of the 10<sup>th</sup> District, the following apply:

a. The court of appeals or common pleas court considering the matter may consider judicial decisions of the Franklin County Common Pleas Court and the 10<sup>th</sup> District that were decided prior to September 29, 2023, in deciding the matter;

b. The judicial decisions of the Franklin County Common Pleas Court and the 10<sup>th</sup> District that were decided prior to September 29, 2023, are not binding on the court of appeals or common pleas court considering the matter; and

c. The court of appeals or common pleas court considering the matter is not required to issue any findings of fact explaining why the court, in deciding the matter, did not consider or follow any precedent on the matter set forth in any judicial decision of the Franklin County Common Pleas Court or the 10<sup>th</sup> District.

## No claim preclusion in zoning appeals

The act provides that a final judgment on the merits issued by a court of competent jurisdiction does not preclude later claims for damages, including civil actions for deprivation of rights under federal law, if the claim is brought under any of the following:

1. Laws governing county rural zoning or the renewal of slums and blighted areas in a county;

---

<sup>11</sup> R.C. 5164.38(C) and (D).

<sup>12</sup> Section 3(C) and (D).

2. The Township Zoning Law; or
3. Laws governing municipal zoning, regional and county planning commissions, or interstate regional planning commissions.

This provision applies even if the common law doctrine of *res judicata* (where a matter has been adjudicated by a competent court and may not be pursued further by the same parties) would otherwise bar the claim.

The act states that the General Assembly intends that the above provisions in the respective laws be construed to override the federal Sixth Circuit Court of Appeals' decision in the case of *Lavon Moore v. Hiram Twp.*, 988 F.3d 353 (6<sup>th</sup> Cir. 2021).<sup>13</sup>

## **State involvement in legal actions**

### **Intervention by the General Assembly or the Governor**

The act specifies that the General Assembly, the House of Representatives, and the Senate individually, and the Governor may intervene as a matter of right (that is, become a party to a court case) at any time in any civil action or proceeding that involves a challenge to the Ohio Constitution or the laws of Ohio and that is an important matter of statewide concern. However, continuing law prohibits any public official from entering into a legal agreement that nullifies, suspends, enjoins, alters, or conflicts with any provision of the Revised Code.

In intervening in a case, the Speaker may act on behalf of the House, the Senate President may act on behalf of the Senate, and the Speaker and the President may act jointly on behalf of the General Assembly. Intervention must be in accordance with the Ohio Rules of Civil Procedure or the Federal Rules of Civil Procedure, as applicable.<sup>14</sup>

### **Special counsel**

The act also creates exceptions to the law that requires the Attorney General to represent a state agency in any legal action, either through the Attorney General's office or by appointing special counsel, and that prohibits agencies from obtaining other counsel.<sup>15</sup>

### **General Assembly**

First, the act allows the Speaker of the House and the Senate President to retain their own legal counsel, other than from the Attorney General, to intervene in a judicial proceeding, as described above, on behalf of the House, the Senate, or the General Assembly. The Speaker and the President, individually or jointly, also may retain attorneys to provide advice and

---

<sup>13</sup> R.C. 303.65, 519.26, and 713.16.

<sup>14</sup> R.C. 101.55 and 107.13. See also R.C. 9.58, not in the act; [Rule 24 of the Ohio Rules of Civil Procedure \(PDF\)](#), available at [supremecourt.ohio.gov](http://supremecourt.ohio.gov) under "Ohio Rules of Court"; and [Rule 24 of the Federal Rules of Civil Procedure \(PDF\)](#), available at [uscourts.gov](http://uscourts.gov) under "Rules & Policies."

<sup>15</sup> R.C. 109.02.



counsel to them on matters that affect the official business of the General Assembly. The House and the Senate may do so only in a civil proceeding, not in any criminal proceeding.

The Speaker and the President, as applicable, must approve all terms of representation and authorize payment for all financial costs incurred. Payment must be from the House's or Senate's operating expenses appropriation line item or from a separate appropriation made for those costs. But, the House, the Senate, or the General Assembly, as applicable, may rescind the retention of a particular legal counsel in a particular matter by adopting a resolution by a simple majority vote.

These provisions do not limit any authority of the General Assembly or its members that is granted under the Ohio Constitution or other provisions of the Revised Code. The act also specifies that the provisions described above do not constitute a waiver of the legislative immunity or legislative privilege of the Speaker, the President, or any member, officer, or staff of either house.<sup>16</sup>

The concepts of legislative privilege and immunity come from the Speech and Debate Clause of the Ohio Constitution, which provides that, "for any speech, or debate, in either House, . . . [Senators and Representatives] shall not be questioned elsewhere." The courts have interpreted this clause to mean that members of the General Assembly, and to some extent their staff, may not be prosecuted or sued for their legitimate legislative activities and that members of the General Assembly and sometimes their staff enjoy an evidentiary privilege that prevents certain legislative activities from being used in court as evidence against them.<sup>17</sup>

## **Governor**

Similarly, the act allows the Governor to retain legal counsel, other than from the Attorney General, to intervene in a judicial proceeding, as described above, or to provide advice and counsel to the Governor on matters that affect the official business of the Office of the Governor. The Governor may do so only in a civil proceeding, not in any criminal proceeding.

The Governor must approve all terms of representation and authorize payment for all financial costs incurred from the Governor's operating expenses appropriation line item or from a separate appropriation made for those costs. A representation agreement entered into under the act is not subject to continuing-law requirements that agencies follow Department of Administrative Services contracting procedures and receive Controlling Board approval before awarding a contract worth \$50,000 or more without competitive bidding.<sup>18</sup>

These provisions do not limit any authority of the Governor that is granted under the Ohio Constitution or other provisions of the Revised Code. Finally, the act specifies that it does not constitute a waiver of any executive privilege of the Governor or any executive officer or

---

<sup>16</sup> R.C. 101.55.

<sup>17</sup> Ohio Constitution, Article II, Section 12. See also *Hicksville v. Blakeslee*, 103 Ohio St. 508 (1921) and *Dublin v. State of Ohio*, 138 Ohio App.3d 753 (10<sup>th</sup> Dist. Ct. App. 2000).

<sup>18</sup> See R.C. 125.05 and 127.16.

staff.<sup>19</sup> Although the Ohio Constitution and the Revised Code do not mention executive privilege, the Ohio Supreme Court has recognized that a limited executive privilege applies under the common law. Under certain circumstances, executive privilege protects the confidentiality of communications between the Governor and executive agencies, and might also protect the confidentiality of documents and other materials related to the deliberative process by which the Governor formulates policies and makes decisions.<sup>20</sup>

## **Hamilton County Drug Court jurisdiction**

The act modifies the jurisdiction of the Drug Court of the Hamilton County Court of Common Pleas. Under the act, the Hamilton County Municipal Court may refer a case to the Drug Court if the case is eligible for admission to the Drug Court under a local rule adopted by the Hamilton County Court of Common Pleas. However, a local rule adopted by the Hamilton County Court of Common Pleas may not permit referral of a case to the Drug Court if the case involves a first or second degree felony, a sex offense that is a third degree felony, or aggravated murder or murder. The act repeals statutory provisions that specified the types of cases that may be referred to the Drug Court.<sup>21</sup>

## **Jurisdiction of Tiffin-Fostoria Municipal Court**

### **Bowling Green Municipal Court – Perry Township in Wood County**

The act transfers Perry Township in Wood County from the territorial jurisdiction of the Tiffin-Fostoria Municipal Court to the territorial jurisdiction of the Bowling Green Municipal Court, effective January 2, 2024. Under prior law, Perry Township, except for the municipal corporation of West Millgrove in Wood County, was within the territorial jurisdiction of the Tiffin-Fostoria Municipal Court. West Millgrove was within the territorial jurisdiction of the Bowling Green Municipal Court. Cases arising in Perry Township, except for those arising within the municipal corporation of West Millgrove, were filed in the office of the special deputy clerk in Fostoria.<sup>22</sup>

The act specifies that all cases arising in Perry Township in Wood County that are pending in the Fostoria branch of the Tiffin-Fostoria Municipal Court on January 2, 2024, are to be adjudicated by the Fostoria branch of the Tiffin-Fostoria Municipal Court. All cases arising in Perry Township in Wood County on or after January 2, 2024, are to be brought before the Bowling Green Municipal Court.<sup>23</sup>

---

<sup>19</sup> R.C. 107.13.

<sup>20</sup> *State ex rel. Dann v. Taft*, 109 Ohio St.3d 364 (2006).

<sup>21</sup> R.C. 1901.041(B) and 2301.03(B)(3).

<sup>22</sup> R.C. 1901.02 and 1901.021.

<sup>23</sup> Section 3(A).

## **Findlay Municipal Court – Washington Township in Hancock County**

The act transfers Washington Township in Hancock County from the territorial jurisdiction of the Tiffin-Fostoria Municipal Court to the territorial jurisdiction of the Findlay Municipal Court, effective January 2, 2024. Under prior law, Washington Township in Hancock County was within the territorial jurisdiction of the Tiffin-Fostoria Municipal Court. Cases arising in Washington Township were filed in the office of the special deputy clerk located in Fostoria.<sup>24</sup>

The act specifies that all cases arising in Washington Township in Hancock County that are pending in the Fostoria branch of the Tiffin-Fostoria Municipal Court on January 2, 2024, are to be adjudicated by the Fostoria branch of the Tiffin-Fostoria Municipal Court. All cases arising in Washington Township in Hancock County on or after January 2, 2024, are to be brought before the Findlay Municipal Court.<sup>25</sup>

## **Sandusky County County Court judges**

Effective January 2, 2025, the act replaces the two part-time judges in the Sandusky County County Court with one full-time judge, to be elected in 2024, the term to commence on January 2, 2025. Effective January 2, 2025, notwithstanding the continuing law specifying the base compensation and additional compensation of county court judges, the full-time judge must receive the compensation equal to the compensation of a full-time municipal court judge.<sup>26</sup>

Effective January 2, 2025, the act abolishes one part-time judgeship of that county court elected in 2018 and whose term expires December 31, 2024, and abolishes the other part-time judgeship elected in 2018 and whose term expires January 1, 2025.<sup>27</sup>

The act repeals the creation of the Sandusky County Municipal Court. It removes all references to “Sandusky County Municipal Court” in the relevant statutes pertaining to the Sandusky County Municipal Court.<sup>28</sup>

---

<sup>24</sup> R.C. 1901.02 and 1901.021.

<sup>25</sup> Section 3(B).

<sup>26</sup> R.C. 1907.11, and by reference to R.C. 141.04(A)(5) and (A)(6) and R.C. 1907.16(A), not in the act.

<sup>27</sup> R.C. 1907.11.

<sup>28</sup> R.C. 1901.01(H), 1901.02(A)(30) and (B), 1901.07(C)(6), 1901.08, and 1901.31(A)(2)(a) and (c) and (C)(1), and 1907.11.

---

## HISTORY

| Action                                      | Date     |
|---------------------------------------------|----------|
| Introduced                                  | 01-11-23 |
| Reported, S. Judiciary                      | 02-16-23 |
| Passed Senate (24-7)                        | 02-22-23 |
| Reported, H. Civil Justice                  | 05-24-23 |
| Passed House (68-27)                        | 06-14-23 |
| Senate concurred in House amendments (24-7) | 06-15-23 |

---