



COUNTY ADVISORY BULLETIN

CAB

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PROHIBIT LOCAL GOVERNMENT FROM ADOPTING RENT CONTROL ORDINANCES AND MODIFY NOTIFICATION PROCEDURES FOR CONSTRUCTION NEAR HAZARDOUS UNDERGROUND PIPELINES

APPLICABLE LEGISLATION: Substitute House Bill 430 (134th General Assembly)

To address underground utility facilities affected by construction, to exempt mobile computing units from certain building regulations, to make changes relating to the Landlord and Tenant Law, to limit regulation of telecommunications, wireless, or internet protocol-enabled service providers, to revise the law governing the plugging of idle and orphaned wells, to revise the eligible uses of the Abandoned Mine Reclamation Fund, and to designate April as "Ohio Work Zone Safety Awareness Month."

O.R.C. SECTIONS AMENDED: 153.64, 1509.01, 1509.071, 1509.151, 1513.37, 3781.06, 3781.106, 3781.27, 5321.01, and 5321.19

O.R.C. SECTIONS ENACTED: 5.248, 4927.102, and 5321.20

LEAD SPONSOR: Rep. Jon Cross

HOUSE COSPONSORS: Representatives Johnson, Holmes, Fraizer, Carruthers, Edwards, Galonski, Ghanbari, Hillyer, John, Jones, Lanese, LaRe, Lightbody, Loychik, Miller, A., Miller, J., O'Brien, Patton, Riedel, Stephens, White

SENATE COSPONSORS: Senators Brenner, Cirino, McColley, Peterson, Reineke, Schaffer

EFFECTIVE DATE: September 23, 2022

SUMMARY

House Bill 430 as passed by the House of Representatives contained provisions to improve the safety of construction projects near underground pipelines and to designate April as "Ohio Work Zones Safety Awareness Month." The bill was amended in the Senate with other provisions to prohibit local governments from adopting residential rent controls; limit the Public Utilities Commission of Ohio's regulatory authority to impose additional conditions with respect to

withdrawal of telecommunications services; exempt mobile computing units from the state building code; direct the Board of Building Standards to adopt rules governing devices that temporarily block doorways in nonresidential buildings; revise ODNR's procedures with respect to plugging orphaned wells; and, revise the allowable uses of the ODNR Abandoned Mine Reclamation Fund.

INTERSTATE PIPELINES

ORC Chapter 153 establishes procedures that a county or other public authority must use when constructing a public improvement. One of the first steps that must take place is to ascertain the location of any underground utility facilities within or near the construction zone prior to preparing plans and specifications (ORC Section 153.64). If construction could involve underground facilities, continuing law requires the public authority to contact a protection service and any owners of underground utility facilities that are not members of a protection service to request information regarding the existence and location of all underground utility facilities within the construction area.

If requested by the public authority, each owner of underground utility facilities within the construction area must do one of the following within 10 days of receiving notice from the public authority or a protection service:

- Mark the location of the underground utility facilities, other than those facilities serving single-family or two-, three-, or four-unit dwellings, within the construction area;
- Provide digital or paper drawings, or both, that meet both of the following requirements:
(i) They are drawn to scale and include locatable items. Locatable items may include poles, pedestals, back of curb, sidewalk, edge of pavement, centerline of ditch, property lines, and other similar items. (ii) They depict the location of the underground utility facilities.

HB 430 adds new requirements for a pipeline operator and a public authority when construction work is near an "interstate gas pipeline" or an "instate hazardous liquids pipeline." The new law defines these terms as follows:

- "Interstate gas pipeline" means an interstate gas pipeline subject to the "Natural Gas Pipeline Safety Act of 1968," 49 U.S.C. 1671, as amended.
- "Interstate hazardous liquids pipeline" means an interstate hazardous liquids pipeline subject to the "Hazardous Liquid Pipeline Safety Act of 1979," 49 U.S.C. 2002, as amended.

If the public improvement is within 660 feet of the center point of any interstate hazardous liquid pipeline or interstate gas pipeline, **the pipeline operator** must provide to the public authority all of the following:

- A written notice of any special notification requirements.
- The location and description of any right-of-way associated with the pipeline as well as pipeline location information, such as providing documents reflecting the actual location of the pipeline, marking facilities on design drawings, and providing maps.

- Contact information for the primary contact person for the project area.

If the public authority is notified that the improvement is within 660 feet of the center point of any interstate hazardous liquid pipeline or interstate gas pipeline, the **public authority** must also include in the plans and specifications for the project all of the following:

- Any special notification requirements.
- The name and contact information of the primary contact person for each pipeline operator who has provided notice to the public authority.
- Notice stating that the public authority has utilized reasonable means to contact the pipeline operator to verify the location of the pipeline and pipeline right-of-way (providing notice to the protection service satisfies this requirement).
- Notice that the public authority has reviewed, or has attempted to review, preliminary information about the public improvement with the pipeline operator and incorporated the requested adjustments into the plans.
- Notice that the developer or designer has reviewed, or attempted to review, preliminary information about the proposed development with the pipeline operator and incorporated requested adjustments into the plans.

A similar amendment is made to ORC Section 3781.27 governing notice requirements for utilities and developers on private property. In addition, the new law allows a public authority to withhold approval for a project on private property until the notification requirements of the section have been satisfied by the developer and utility (ORC Section 3781.27(G)). A public authority is immune from liability related to the approval or construction of the development when the approval is based on information provided in accordance with the prescribed procedures.

RESIDENTIAL RENT CONTROL

HB 430 amends Ohio Landlord-Tenant Law to prohibit a county, township, municipality or other political subdivision from imposing or requiring residential rent control or rent stabilization without the consent of the property owner (ORC Section 5321.19). This prohibition extends to maintaining or continuing an existing resolution, ordinance, or rule. "Rent control" is defined as requiring below-market rents for residential premises or controlling rental rates for residential premises in any manner, including by prohibiting rent increases, regulating rental rate changes between tenancies, limiting rental rate increases, regulating the rental rates of residential premises based on income or wealth of tenants, and other forms of restraint or limitation of rental rates (ORC Section 5321.01(O)). "Rent stabilization" means allowing rent increases for residential premises of a fixed amount or on a fixed schedule as set by a political subdivision (ORC Section 5321.01(P)).

The prohibition does not apply in the following two circumstances (ORC Section 5321.19(B)):

- A political subdivision adopts a charter provision, ordinance, resolution, rule, or other measure that regulates, or has the effect of regulating in any way, rent charged or paid for the use of residential premises that such political subdivision owns or operates;
- A political subdivision adopts a charter provision, ordinance, resolution, rule, or other measure to implement a plan to use voluntary incentives or agreements that regulates, or has the effect of regulating in any way, rent charged or paid for the use of residential premises so long as such regulating is related to voluntary incentives or agreements to increase or maintain the supply or improve the quality of available residential premises, including, without limitation, incentives authorized by federal law, the incentives related to a Community Reinvestment Area (ORC Sections 3735.65 to 3735.70), tax abatements, tax credit financing, bond or other financing, or loans or grants from the political subdivision.

ORC Section 5321.20 contains a declaration of legislative intent and findings. The language declares that ORC Chapter 5321 is a statewide and comprehensive legislative enactment regulating all aspects of the landlord-tenant relationship with respect to residential premises and that rent control is a matter of general statewide concern that requires uniform statewide regulation.

TELECOMMUNICATIONS REGULATION

Continuing law allows a telecommunications carrier to abandon or withdrawal basic local telephone exchange service if federal regulations permit, and if the carrier provides 120 days prior notice to the Public Utilities Commission. The withdrawal of other types of telecommunication services requires 30 days' notice. (ORC Sections 4927.07 and 4927.10)

HB 430 prohibits the Public Utilities Commission, in connection with any withdrawal proceedings, from imposing on any provider of telecommunications service, wireless service, or internet protocol-enabled services any notice requirement, withdrawal or abandonment restrictions, buildout requirements, or any other regulatory requirement or restriction that are not generally applicable to the service or the provider in other contexts. The Commission is required to amend its rules to bring them into conformity with the new law within 90 days of the effective date (Section 3 of the bill).

MOBILE COMPUTING UNITS

HB 430 creates a new exception to the state building code for mobile computing units (ORC Section 3781.06). The term "mobile computing unit" is defined as an assembly that meets all of the following criteria:

- Its purpose is to house and operate computers as defined in ORC Section 2913.01.
- Its exterior is integral to the protection or cooling, or both, of the computers housed within it.
- It is not attached to a permanent foundation.
- It is not accessible to the public.

- It is not designed for regular occupancy, but rather limited access for service and maintenance.
- It can be moved or transported as a single integrated unit.

ABANDONED MINE RECLAMATION FUND

Previous law established the Abandoned Mine Reclamation Fund in the Ohio Department of Natural Resources – Division of Mineral Resources Management. HB 430 expands the purposes of the Fund to include reclaiming public or private land that has been affected by mining, or controlling mine drainage under ORC Section 1513.27 in accordance with the requirements of the federal "Infrastructure Investment and Jobs Act," Pub. Law No. 177-58.

TEMPORARY BARRIERS FOR NONRESIDENTIAL BUILDINGS

Continuing law requires the State Board of Building Standards to adopt rules for the use of a device by a staff member of a public or private school or institution of higher education that prevents both ingress and egress through a door in a school building, for a finite period of time, in an emergency situation, and during active shooter drills. The rules must provide that the use of a device is permissible only if the device requires minimal steps to remove it after it is engaged (ORC Section 3781.106(B)).

HB 430 requires the Board of Building Standards to adopt similar rules for the use of a door-blocking device or barricade by a building owner in a nonresidential building (ORC Section 3781.106(C)). "Nonresidential building" is defined as a building or structure, or part of a building or structure, not occupied in whole or in part for the purpose of human habitation, and includes the lands and premises appurtenant and all of the outbuildings, fences, or erections thereon or therein. "Nonresidential building" does not include an institution of higher education, private school, or public school.

The device prevents both ingress and egress through a door in the building, for a finite period of time, in an emergency situation (as defined by the Board), and during active shooter drills. The rules must provide that the use of a device is permissible only if the device requires minimal steps to remove it after it is engaged. The rules also must require the owner of a building to notify the police chief, or equivalent, of the law enforcement agency that has jurisdiction over the building, and the fire chief, or equivalent, of the fire department that serves the political subdivision in which the building is located, prior to the use of such devices in a building.

The rules may require that the device be visible from the exterior of the door. The device cannot be permanently mounted to the door. Each owner of a nonresidential building must provide training on the use of the device to any person that may use or operate it. The owner of the building must maintain a record on file verifying this training. These rules apply to both existing and new nonresidential buildings. Provisions of the state fire code that conflict with the board's rules are unenforceable.

ORPHANED WELLS – Ohio Department of Natural Resources (ODNR)

Prior law defined an orphaned well as being a well for which a bond has been forfeited or an abandoned well for which no money is available to plug the well in accordance with ORC Chapter 1509. The new law modifies this definition to mean either of the following:

- The owner of the well is unknown, deceased, or cannot be located and the well is abandoned;
- The owner has abandoned the well and there is no money available to plug the well in accordance with ORC Chapter 1509.

The revised law allows ODNR to post notice on its website that a well is to be plugged as an alternative to placing notice in a local newspaper. The language also clarifies that ODNR may make expenditures for salaries, maintenance, equipment, or other administrative purposes, that are directly attributed to the locating, analyzing, stabilizing, designing, plugging of, remediating, or restoring an idle and orphaned well, and for determining if a well is an orphaned well. The language also clarifies that ODNR employees or their agents may enter the property, or adjacent properties if necessary, for these purposes.

Continuing law allows a landowner who has received notice that an orphaned well must be plugged to be reimbursed by the department as long as ODNR has approved the contract and inspected the final work. HB 430 adds that the contract may be modified with ODNR's approval due to unanticipated changes. The ODNR must approve the changes in writing.

Continuing law allows ODNR to engage in cooperative projects to plug a well with any state agency, another state, any federal governmental agency, or university or college. The new law adds that cooperation may also take place with a nonprofit 501(c)(3) organization.