



COUNTY ADVISORY BULLETIN

CAB

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BULLETIN 2012-05

March, 2012

**RECENT CHANGES TO LAW RELATING TO COUNTY FINANCE, BUDGET,
AND COMPETITIVE SEALED PROPOSALS AND BIDS**

APPLICABLE LEGISLATION: Am. Sub. HB 225

REVISED CODE SECTIONS:

Amends ORC Sections 9.37, 307.862, 307.88, 5705.13,

SPONSORS: Peterson and Landis

Reps. J. Adams, R. Adams, Amstutz, Anielski, Antonio, Baker, Balderson, Barnes, Batchelder, Beck, Blair, Blessing Boose, Brenner, Bubp, Buchy, Carey, Carney, Damschroder, DeGeeter, Derickson, Dovilla, Duffey, Foley, Goodwin, Grossman, Hackett, Hall, Hayes, Henne, Hollington, Huffman, Letson, Maag, Mallory, McClain, McKenney, Milkovich, Newbold, O'Brien, Pillich, Ramos, Ruhl, Schuring, Sears, Slaby, Sprague, Stebelton, Stinziano, Szollosi, Thompson, Uecker, Weddington, Yuko

Sens. Coley, Daniels, Eklund, Hite, LaRose, Lehner, Niehaus, Seitz

EFFECTIVE DATE: March 22, 2012

BULLETIN SUMMARY

Am. Sub. HB 225:

- I. authorizes a county auditor to adopt a direct deposit payroll policy for all county employees,
- II. authorizes counties to increase the amount of money credited to "rainy day" reserve balance accounts;
- III. expands what a subdivision may pay for out of reserve balance accounts established for self-insurance or workers' compensation payments; and
- IV. updates law around competitive sealed proposals and bids to permit electronic communication.

Direct Deposit Payroll Policy

HB 225 amends the law (ORC 9.37) to permit a county auditor to adopt a direct payroll policy under which all county employees are paid their compensation by direct deposit. A county auditor may establish a direct deposit payroll policy that requires all county employees to provide a written authorization designating a financial institution and account number to which payment of an employee's compensation is to be credited. The law authorizes the county auditor to exempt from the direct payroll policy those employees who cannot provide an account number or for such other reasons specified in the policy.

The law provides that a written authorization designating a financial institution and an account number is not a public record and thus is not subject to the public records law.

Reserve Balance Accounts

The law (ORC 5705.13 (A)) authorizes counties to increase the amount of money that may be credited to "rainy day" reserve balance accounts and expands the number of purposes for which other reserve balance accounts may be used. Prior law permitted the taxing authority of a political subdivision (board of commissioners in the case of a county) to establish reserve balance accounts in which money may be accumulated for the following purposes:

- a) To stabilize budgets against cyclical changes in revenues and expenditures (often referred to as "rainy day accounts");
- b) To provide for the payment of claims under a self insurance program; and
- c) To provide for the payment of claims under a retrospective ratings plan for workers compensation.

Continuing law requires a resolution establishing a reserve balance account to state the purpose for which the reserve balance account is being established, the fund in which the account is being established, and the amount of money to be reserved in the account.

A board of commissioners (or other taxing authority of a political subdivision), by resolution, may rescind a reserve balance account. If a reserve balance account is rescinded, then the money in the reserve balance account must be transferred to the fund or funds from which the money was originally transferred.

Increased Balance for Budget Stabilization "Rainy Day" Accounts

The law permits counties to reserve in a rainy day account in any fiscal year the greater of 5% of the revenue credited in the preceding fiscal year to the fund in which the account is established or one sixth of the expenditures during the preceding fiscal year in which the account is established. Prior law had limited the amount of money that could be reserved by any political subdivision to an amount not to exceed 5% of the revenue credited in the preceding fiscal year to the fund in which the account is established.

The expanded authority for rainy day accounts applies only to counties and townships. A rainy day account may be established in the county general fund or in one or more special funds for the operating purposes of the county. The one sixth reserve balance provision is the equivalent of two months expenditures which is what the Government Finance Officers Association

(GFOA) recommends as a minimum balance to protect against fluctuations in revenues and expenditures.

A board of commissioners (or other taxing authority of a political subdivision) may at any time, by resolution, reduce or eliminate the reserve balance in a reserved balance account for budget stabilization purposes.

A reserve balance account established for budget stabilization purposes by a political subdivision is not considered “unencumbered funds” for purposes of a county budget commission’s calculation of fund balances to be included in the political subdivision’s “official certificate of estimated resources.” This means that a reserve balance account established for budget stabilization purposes is not unencumbered money that must be made available for appropriation in the following fiscal year. (The law references ORC Sections 5705.35 and 5705.36.)

Expanded Authority to Use Reserve Balance Accounts for Insurance Purposes

The law permits the payment of not only insurance claims under a self insurance program, but also for the payment of deductibles under either an individual or joint self insurance program out of a reserve balance account.

The law also permits any county or other political subdivision that participates in a risk sharing pool to establish a reserve balance account for the county or other political subdivision to pay deductibles when there are large claims.

Expanded Authority to Use Reserve Balance Accounts for Workers’ Compensation Purposes

In addition to the payment of claims under a retrospective rating plan, the new law permits reserve balance accounts to be used for:

- Payment of assessments and,
- Payment of deductibles.

In addition to the payment of claims, assessments and deductibles under a retrospective rating plan, the new law permits the payment of claims, assessments and deductibles under the following programs:

- Self insurance program,
- Individual retrospective ratings plan,
- Group rating plan,
- Group retrospective ratings plan,
- Medical-only program,
- Deductible plan,
- Large deductible plan for workers’ compensation.

Provisions Applicable to Reserve Balance Accounts for Insurance and Workers’ Compensation Purposes

A reserve balance account established for insurance purposes or workers’ compensation purposes must be established in the county’s general fund or in an internal service fund. Only one such reserve balance account may be established for each of insurance and workers’

compensation purposes in any county or other political subdivision. Money to the credit of a reserve balance account may be expended only for the purpose for which the account was established.

Competitive Sealed Proposals and Bids

Continuing law prescribes procedures for the submission of bids with respect to the following types of competitive processes:

- Competitive Sealed Bidding – Often referred to as an Invitation to Bid (ITB) process where bidders are required to submit fixed price quotes along with their bids where the bids are taken as submitted and are not subject to negotiation or modification by the contracting authority (ORC 307.86), and
- Competitive Sealed Proposals – This is a request for proposal (RFP) process where the price and other aspects of a final contract are subject to negotiation between the vendor and the contracting authority (ORC 307.862).

In each instance mentioned above continuing law (ORC 307.87) requires the contracting authority to publish notice of the bidding opportunity twice in a newspaper of general circulation in the county or, if the county maintains a website and complies with other conditions specified in the law, the county may publish one notice in a newspaper of general circulation and then post notice of the bidding opportunity on the county website.

Electronic System for Competitive Sealed Proposals

The new law permits a county contracting authority using the competitive sealed proposal process to:

- Give notice of a request for proposals (RFP) through a uniform, interactive and secure electronic system that complies with Ohio's uniform electronic transactions law (ORC Chapter 1306),
- Receive proposals through a uniform, interactive and secure electronic system that complies with Ohio law, and
- Award a contract through the use of an electronic system that is uniform, interactive and secure.

Providing notice through an electronic system as authorized by ORC 307.862 (A) (4) appears to be in addition to and not a substitution for providing notice in a newspaper of general circulation in the county as specified in the general public notice requirements of the competitive bidding law (ORC 307.87)

The law also requires the contracting authority to develop factors and criteria for the receipt of competitive sealed proposals. Continuing law already requires the contracting authority to develop factors and criteria for the evaluation of proposals.

Electronic System for Competitive Sealed Bids

Continuing law (ORC 307.88 (A)) requires a county contracting authority to prescribe the form of a bid when the contracting authority is required to solicit bids for goods, services and public improvements. Former law required bids to be submitted in a sealed envelope. The new law

requires that competitive sealed bids be submitted to a county contracting authority in the manner mentioned in the notice published by the contracting authority.

While this section of law does not prescribe in what manner the contracting authority may request that bids be submitted, the changes to the competitive sealed proposal law suggest that a contracting authority may solicit bids in a sealed envelope or by electronic means provided the county has established a uniform, interactive and secure electronic system for the submission of bids. Due to the fact that changes to this section of the competitive bidding law are open ended, commissioners and county contracting personnel may wish to consult with their county prosecutor prior to soliciting bids by electronic means under the county competitive bidding laws (ORC 307.86 and 307.88).

Attached to this CAB as Exhibit 1 is a copy of ORC Sections 9.37, 5705.13, 307.862, and 307.88 as amended by the Act.

EXHIBIT 1
OHIO REVISED CODE SECTIONS 9.37, 5705.13,
AS AMENDED BY SUB. H.B. 225 OF THE 129TH GENERAL ASSEMBLY

Sec. 9.37. (A) As used in this section, "public official" means any elected or appointed officer, employee, or agent of the state, any state institution of higher education, any political subdivision, board, commission, bureau, or other public body established by law. "State institution of higher education" means any state university or college as defined in division (A)(1) of section 3345.12 of the Revised Code, community college, state community college, university branch, or technical college.

(B) Except as provided in ~~division~~ divisions (F) and (G) of this section, any public official may make by direct deposit of funds by electronic transfer, if the payee provides a written authorization designating a financial institution and an account number to which the payment is to be credited, any payment such public official is permitted or required by law in the performance of official duties to make by issuing a check or warrant.

(C) Such public official may contract with a financial institution for the services necessary to make direct deposits and draw lump-sum checks or warrants payable to that institution in the amount of the payments to be transferred.

(D) Before making any direct deposit as authorized under this section, the public official shall ascertain that the account from which the payment is to be made contains sufficient funds to cover the amount of the payment.

(E) If the issuance of checks and warrants by a public official requires authorization by a governing board, commission, bureau, or other public body having jurisdiction over the public official, the public official may only make direct deposits and contracts under this section pursuant to a resolution of authorization duly adopted by such governing board, commission, bureau, or other public body.

(F) Pursuant to sections 307.55, 319.16, and 321.15 of the Revised Code, a county auditor may issue, and a county treasurer may redeem, electronic warrants authorizing direct deposit for payment of county obligations in accordance with rules adopted by the director of budget and management pursuant to Chapter 119. of the Revised Code.

(G) The legislative authority of a municipal corporation, for employees of the municipal corporation, a county auditor, for county employees, or a board of township trustees, for township employees, may adopt a direct deposit payroll policy under which all employees of the municipal corporation, all county employees, or all township employees, as the case may be, provide a written authorization designating a financial institution and an account number to which payment of the employee's compensation shall be credited under the municipal corporation's, county's, or township's direct deposit payroll policy. The direct deposit payroll policy adopted by the legislative authority of a municipal corporation, a county auditor, or a board of township trustees may exempt from the direct deposit requirement those municipal, county, or township employees who cannot provide an account number, or for other reasons specified in the policy. The written authorization is not a public record under section 149.43 of the Revised Code.

Sec. 5705.13. (A) A taxing authority of a subdivision, by resolution or ordinance, may establish reserve balance accounts to accumulate currently available resources for the following purposes:

(1) To stabilize subdivision budgets against cyclical changes in revenues and expenditures;

(2) Except as otherwise provided by this section, to provide for the payment of claims and deductibles under a an individual or joint self-insurance program for the subdivision, if the subdivision is permitted by law to establish such a program;

(3) To provide for the payment of claims, assessments, and deductibles under a self-insurance program, individual retrospective ratings plan, group rating plan, group retrospective rating plan, medical only program, deductible plan, or large deductible plan for workers' compensation.

The ordinance or resolution establishing a reserve balance account shall state the purpose for which the account is established, the fund in which the account is to be established, and the total amount of money to be reserved in the account.

~~A subdivision that participates in a risk-sharing pool, by which governments pool risks and funds and share in the costs of losses, shall not establish a reserve balance account to provide self-insurance for the subdivision.~~

Not more than one reserve balance account may be established for each of the purposes permitted under divisions (A)(2) and (3) of this section. Money to the credit of a reserve balance account may be expended only for the purpose for which the account was established.

A reserve balance account established for the purpose described in division (A)(1) of this section may be established in the general fund or in one or more special funds for operating purposes of the subdivision. The amount of money to be reserved in such an account in any fiscal year shall not exceed five per cent of the revenue credited in the preceding fiscal year to the fund in which the account is established, or, in the case of a reserve balance account of a county or of a township, the greater of that amount or one-sixth of the expenditures during the preceding fiscal year from the fund in which the account is established. Subject to division (G) of section 5705.29 of the Revised Code, any reserve balance in an account established under division (A)(1) of this section shall not be considered part of the unencumbered balance or revenue of the subdivision under division (A) of section 5705.35 or division (A)(1) of section 5705.36 of the Revised Code.

At any time, a taxing authority of a subdivision, by resolution or ordinance, may reduce or eliminate the reserve balance in a reserve balance account established for the purpose described in division (A)(1) of this section.

A reserve balance account established for the purpose described in division (A)(2) or (3) of this section shall be established in the general fund of the subdivision or by the establishment of a separate internal service fund established to account for the operation of the an individual or joint self-insurance or retrospective ratings plan program described in division (A)(2) of this section or a workers' compensation program or plan described in division (A)(3) of this section,

and shall be based on sound actuarial principles. The total amount of money in a reserve balance account for self-insurance may be expressed in dollars or as the amount determined to represent an adequate reserve according to sound actuarial principles.

A taxing authority of a subdivision, by resolution or ordinance, may rescind a reserve balance account established under this division. If a reserve balance account is rescinded, money that has accumulated in the account shall be transferred to the fund or funds from which the money originally was transferred.

(B) A taxing authority of a subdivision, by resolution or ordinance, may establish a special revenue fund for the purpose of accumulating resources for the payment of accumulated sick leave and vacation leave, and for payments in lieu of taking compensatory time off, upon the termination of employment or the retirement of officers and employees of the subdivision. The special revenue fund may also accumulate resources for payment of salaries during any fiscal year when the number of pay periods exceeds the usual and customary number of pay periods. Notwithstanding sections 5705.14, 5705.15, and 5705.16 of the Revised Code, the taxing authority, by resolution or ordinance, may transfer money to the special revenue fund from any other fund of the subdivision from which such payments may lawfully be made. The taxing authority, by resolution or ordinance, may rescind a special revenue fund established under this division. If a special revenue fund is rescinded, money that has accumulated in the fund shall be transferred to the fund or funds from which the money originally was transferred.

(C) A taxing authority of a subdivision, by resolution or ordinance, may establish a capital projects fund for the purpose of accumulating resources for the acquisition, construction, or improvement of fixed assets of the subdivision. For the purposes of this section, "fixed assets" includes motor vehicles. More than one capital projects fund may be established and may exist at any time. The ordinance or resolution shall identify the source of the money to be used to acquire, construct, or improve the fixed assets identified in the resolution or ordinance, the amount of money to be accumulated for that purpose, the period of time over which that amount is to be accumulated, and the fixed assets that the taxing authority intends to acquire, construct, or improve with the money to be accumulated in the fund.

A taxing authority of a subdivision shall not accumulate money in a capital projects fund for more than ten years after the resolution or ordinance establishing the fund is adopted. If the subdivision has not entered into a contract for the acquisition, construction, or improvement of fixed assets for which money was accumulated in such a fund before the end of that ten-year period, the fiscal officer of the subdivision shall transfer all money in the fund to the fund or funds from which that money originally was transferred or the fund that originally was intended to receive the money.

A taxing authority of a subdivision, by resolution or ordinance, may rescind a capital projects fund. If a capital projects fund is rescinded, money that has accumulated in the fund shall be transferred to the fund or funds from which the money originally was transferred.

Notwithstanding sections 5705.14, 5705.15, and 5705.16 of the Revised Code, the taxing authority of a subdivision, by resolution or ordinance, may transfer money to the capital projects fund from any other fund of the subdivision that may lawfully be used for the purpose of acquiring, constructing, or improving the fixed assets identified in the resolution or ordinance.

Sec. 307.862. (A) When a county contracting authority uses competitive sealed proposals pursuant to section 307.86 of the Revised Code, the county contracting authority shall do all of the following:

(1) Develop factors and criteria to receive and evaluate each proposal, specify the relative importance of each factor or criterion in writing, and describe the evaluation procedures the contracting authority shall follow when awarding a contract to an offeror.

(2) Solicit competitive sealed proposals through a request for proposals;

(3) Include, at a minimum, all of the information described in division (B) of this section in the request for proposals;

(4) Give notice of the request for proposals in the same manner that notice must be given for competitive bidding pursuant to section 307.87 of the Revised Code; The county contracting authority also may give notice of the request for proposals and receive proposals through a uniform, interactive, and secure electronic system in a manner consistent with Chapter 1306. of the Revised Code.

(5) Open proposals that the contracting authority receives in a manner that prevents the disclosure of contents of competing offers to competing offerors;

(6) Rank each proposal using the factors and criteria the contracting authority develops pursuant to division (A)(1) of this section;

(7) If necessary, conduct discussions with offerors for the purpose of ensuring full understanding of, and responsiveness to, the requirements specified in the request for proposals, and accord fair and equal treatment with respect to any opportunity for discussion with offerors to provide any clarification, correction, or revision of proposals;

(8) If the contracting authority determines that discussions described in division (A)(7) of this section are necessary, avoid disclosing any information derived from proposals submitted by competing offerors during those discussions;

(9) Negotiate with the offeror who submits the proposal that the contracting authority determines is the most advantageous to the county based on the rankings performed by the contracting authority pursuant to division (A)(6) of this section and including any adjustment to those rankings based on discussions conducted pursuant to division (A)(7) of this section;

(10) Conduct negotiations with only one offeror at a time;

(11) Except as provided in division (F) of this section, award a contract in accordance with division (E) of this section.

(B) A contracting authority shall include, at a minimum, all of the following information in the contracting authority's request for proposals:

(1) The name and address of the department, office, institution, board, or commission that is requesting to purchase supplies, services, or both;

- (2) Instructions for offerors to follow when submitting proposals;
- (3) Instructions governing communications between an offeror and the contracting authority, including, but not limited to, the name, title, and telephone number of the person to whom questions concerning the request for proposals should be directed;
- (4) A description of the scope of work that the contracting authority requests an offeror to perform or supplies the contracting authority plans to purchase;
- (5) To the extent possible, a description of the performance criteria the contracting authority shall require an offeror to satisfy, including but not limited to, the quantity of the supplies, services, or both, to be purchased; the requirements the contracting authority shall follow for inspection and acceptance of the supplies, services, or both; and the delivery schedule for each such supply or service;
- (6) The factors and criteria the contracting authority shall consider in evaluating proposals received;
- (7) Any terms and conditions that the contracting authority is required by law to include in the contract the contracting authority awards, including any requirement for a bond and the amount required for that bond;
- (8) The date and time by which, and the place to which an offeror must deliver the offeror's proposal to the contracting authority in order to be considered for the contract;
- (9) A list of any documents that the contracting authority incorporates by reference in the request for proposals, provided that the contracting authority specifies in the request for proposals that the documents are readily available to all offerors and the location where an offeror may obtain those documents;
- (10) A statement that includes all of the following information:
 - (a) That the contracting authority reserves the right to reject any proposal in which the offeror takes exception to the terms and conditions of the request for proposals; fails to meet the terms and conditions of the request for proposals, including but not limited to, the standards, specifications, and requirements specified in the request for proposals; or submits prices that the contracting authority considers to be excessive, compared to existing market conditions, or determines exceed the available funds of the contracting authority;
 - (b) That the contracting authority reserves the right to reject, in whole or in part, any proposal that the county contracting authority has determined, using the factors and criteria the contracting authority develops pursuant to division (A)(1) of this section, would not be in the best interest of the county;
 - (c) That the contracting authority may conduct discussions with offerors who submit proposals for the purpose of clarifications or corrections regarding a proposal to ensure full understanding of, and responsiveness to, the requirements specified in the request for proposals.

(11) Information concerning any potential partial or multiple party awards that the contracting authority may include in the contract, and a description of the supplies, services, or both that may be subject to a partial award or multiple awards;

(12) Any additional information the contracting authority considers necessary for its purposes in determining to whom to award the contract.

(C) In order to ensure fair and impartial evaluation, proposals and any documents or other records related to a subsequent negotiation for a final contract that would otherwise be available for public inspection and copying under section 149.43 of the Revised Code shall not be available until after the award of the contract.

(D) An offeror may withdraw the offeror's proposal at any time prior to the award of a contract. A contracting authority may terminate negotiations with an offeror at any time during the negotiation process if the offeror fails to provide the necessary information for negotiations in a timely manner or fails to negotiate in good faith. If the contracting authority terminates negotiations with an offeror, the contracting authority shall negotiate with the offeror whose proposal is ranked the next most advantageous to the county according to the factors and criteria developed pursuant to division (A)(1) of this section.

(E) A county contracting authority may award a contract to the offeror whose proposal is determined to be the most advantageous to the county, taking into consideration the evaluation factors and criteria developed pursuant to division (A)(1) of this section and set forth in the request for proposals. A contracting authority may award a contract in whole or in part to one or more offerors. The contracting authority shall include a written statement in the contract file stating the basis on which the award is made.

The contracting authority shall send a written notice to the offeror to whom it wishes to award the contract and shall make that notice available to the public. Within a reasonable time period after the award is made, the contracting authority shall notify all other offerors that the contract has been awarded to another offeror.

(F) A contracting authority may cancel or reissue a request for proposals if any of the following apply:

(1) The supplies or services offered through all of the proposals submitted to the contracting authority are not in compliance with the requirements, specifications, and terms and conditions set forth in the request for proposals;

(2) The prices submitted by the offerors are excessive compared to existing market conditions or exceed the available funds of the contracting authority;

(3) The contracting authority determines that award of a contract would not be in the best interest of the county.

(G) A county contracting authority shall not use competitive sealed proposals for contracts for construction, design, demolition, alteration, repair, or reconstruction of a building, highway, drainage system, water system, road, street, alley, sewer, ditch, sewage disposal plant, waterworks, and all other structures or works of any nature by a county contracting authority.

(H) Nothing in this section limits a county contracting authority's ability to award a contract under this section through the use of a uniform, interactive, and secure electronic system.

Sec. 307.88. (A) Bids submitted pursuant to sections 307.86 to 307.92 of the Revised Code shall be in a form prescribed by the contracting authority and filed ~~in a sealed envelope~~ in the manner and at the time and place mentioned in the notice. The bids received shall be opened and tabulated at the time stated in the notice. Each bid shall contain the full name of each person submitting the bid. If the bid is in excess of twenty-five thousand dollars and for a contract for the construction, demolition, alteration, repair, or reconstruction of an improvement, it shall meet the requirements of section 153.54 of the Revised Code. If the bid is in excess of twenty-five thousand dollars and for any other contract authorized by sections 307.86 to 307.92 of the Revised Code, it shall be accompanied by a bond or certified check, cashier's check, or money order on a solvent bank or savings and loan association in a reasonable amount stated in the notice but not to exceed five per cent of the bid, conditioned that the bidder, if the bidder's bid is accepted, shall execute a contract in conformity to the invitation and the bid.

(B) The board of county commissioners, by a unanimous vote of the entire board, may permit a contracting authority to exempt a bid from any or all of the requirements of section 153.54 of the Revised Code if the estimated cost is twenty-five thousand dollars or less. If the board exempts a bid from any but not all of those requirements, the bid notice published in the newspaper pursuant to section 307.87 of the Revised Code shall state the specific bid guaranty requirements that apply. If the board exempts a bid from all requirements of section 153.54 of the Revised Code, the notice shall state that none of the requirements of that section apply.