



COUNTY ADVISORY BULLETIN

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BULLETIN 2000-02

JUNE 2000

**HOUSE BILL 544 CHANGES COUNTY PLANNING COMMISSION COMPOSITION;
INCREASES MAXIMUM LENGTH FOR CERTAIN ROAD IMPROVEMENT BONDS
AND ASSESSMENTS FROM 10 TO 20 YEARS;
ENABLES ALTERNATES TO BE APPOINTED TO COUNTY PLANNING
COMMISSIONS;
INCREASES THE ZONING VIOLATION MAXIMUM FINE;
CHANGES CERTAIN NOTICE REQUIREMENTS FOR PLANNING COMMISSIONS.**

Effective Date: June 14, 2000. *(An emergency clause was included in the bill.)*

Revised Code Sections Affected: 9.44, 124.13, 124.38, 303.99, 325.19, 504.11, 519.99, 711.10, 713.22, and 5555.46.

Lead Sponsor: Peterson (R-Delaware).

House Co-Sponsors: Schuler (R-Cincinnati), Calvert (R-Medina), Grendell (R-Chesterland), Terwilleger (R-Maineville), Tiberi (R-Columbus), Taylor (R-Norwalk), Buehrer (R-Delta), Robinson (R-Columbus), Hartnett (D-Mansfield), Young (R-Leroy), Harris (R-Ashland), Winkler (R-Cincinnati), O'Brien (R-Cincinnati), Clancy (R-Cincinnati), Krebs (R-Camden), Widener (R-Springfield), Trakas (R-Independence), Olman (R-Maumee), Hoops (R-Napoleon), Amstutz (R-Wooster), Stevens (D-Massillon).

Senate Co-Sponsors: Schafrath (R-Loudonville), Kearns (R-Springfield), White (R-Manchester), Gardner (R-Madison), Herington (D-Kent).

OVERVIEW

House Bill 544 (HB 544) of the 123rd General Assembly is considered a local government “clean-up” or “fix-it” bill. This legislation was originally introduced to address the recently

enacted changes to the composition of county planning commissions. Last year House Bill 187 (HB 187) modified the membership of county planning commissions; however, there were unexpected consequences from the legislation. One unintended result was a new requirement that 4 appointive members of the 11 person commission be from or represent municipalities in counties that had never been mandated statutorily to have any municipal representatives. (See CAB 99-10) HB 544 attempts to return balance to the make-up of county planning commissions and restore some discretion to certain boards of county commissioners in selecting appointments to the commission.

It is important to note that HB 544 includes a 30 day limited time period after the bill's effective date (June 14, 2000) in which a board of county commissioners may re-adjust the membership of a county planning commission to reflect the new criteria established by HB 544. A board of county commissioners may exercise this limited authority or may choose to slowly phase in the planning commission composition required by HB 544 as individuals' terms expire and new individuals are appointed. This provision is further explained later in this bulletin.

HB 544 also updates Ohio law by increasing from 10 to 20 years the maximum period to retire bonds and levy assessments for certain road improvements projects. This change is consistent with current assessment and bonding procedures for county water and sewer improvements statutes.

At the request of Representative Chuck Calvert (R-Medina), language was included in HB 544 to allow individuals to appoint alternates to county planning commissions. In addition, an amendment drafted by Senator Bob Cupp (R-Lima) was included increasing the zoning violation maximum fine from \$100 to \$500.

HB 544 also provides certain notice requirements for planning commissions. These requirements are consistent with provisions contained in HB 187 enacted last year.

Finally, HB 544 includes the following provisions: (1) authorization for certain county appointing authorities to recognize unused sick time with a regional council of government (COG) and the years of service with a COG for purposes of vacation accrual rate when an individual transfers to county employment; (2) authorization for certain allocations from a township lighting district; and (3) the effective date for home rule township resolutions. CCAO has prepared a separate bulletin for the first provision. The remaining two items are not discussed in this or any other bulletin.

If you have questions about HB 544, please feel free to contact either Brad Cole or Cheryl Subler, CCAO Senior Policy Analysts, at (614) 221-5627. Or, e-mail them at bcole@ccao.org or csubler@ccao.org.

COUNTY PLANNING COMMISSION COMPOSITION

Background

HB 544 revises the appointment criteria for county planning commissions due to unintended changes made by HB 187 last year. HB 544 only addresses “county” planning commissions and does not make any changes to the composition of “regional” planning commissions.

As you may recall, HB 187 enacted last year changed the composition of planning commissions in an attempt to assure more township representation on county planning commissions. While this goal was achieved in counties with a municipality with 50 percent of the county’s population, the result was the reverse in counties without a 50 percent municipality.

In such counties, HB 187 required 4 appointed members of the 11 member commission to be either nominated by a municipality or reside in a municipality if a county does not have a municipality with more than 50 percent of the county’s population. Practically, this meant that counties like Darke, Ashtabula, Geauga, Trumbull, and Preble, along with others, were mandated to have a large number of municipal representatives on their planning commissions. Prior to HB 187, the law did not require any municipal representatives in such counties.

The Ohio Township Association, the Ohio Municipal League, and the County Commissioners Association of Ohio did not fully realize the impact of HB 187 during consideration of the bill. The local government associations since came together to develop the provisions included in HB 544.

Following is an outline of Section 713.22 of the Revised Code prior to HB 187, after HB 187’s enactment, and after HB 544’s enactment, which is current law.

Law Prior to House Bill 187 – appointment structure

Prior to House Bill 187, the law provided an eleven member commission as follows:

- 3 members of the board of county commissioners.
- 8 citizens of the county appointed by the board of county commissioners. If the population of any city located in the county exceeds 50 percent of the total population of the county, the board of county commissioners shall select 3 of the appointive members from persons nominated by the planning commission of that city.

Law After House Bill 187 – appointment structure

HB 187, which established the law prior to HB 544, provided the following:

- 3 members of the board of county commissioners
- 3 individuals nominated by municipalities and appointed by the board of county commissioners. If the population of any city located in the county exceeds 50 percent of the total population of the county, the board of county commissioners shall select 3 of the appointive members from persons nominated by the planning commission of that city.
- 3 individuals nominated by townships and appointed by the board of county commissioners. If there are one or more home rule townships in the county, at least 1 of these 3 representatives shall be selected from nominations from a home rule township.
- 2 citizens of the county selected by the board of county commissioners. The board shall have discretion in selecting 1 individual residing in the unincorporated area and representing townships, and 1 individual residing in the incorporated area and representing municipalities.

HB 187 also provided that if a county contains two or less townships with unincorporated territory, the structure would be as follows:

- 3 members of the board of county commissioners.
- 8 citizens of the county appointed by the board of county commissioners. If the population of any city located in the county exceeds 50 percent of the total population of the county, the board of county commissioners shall select 3 of the appointive members from persons nominated by the planning commission of that city.

Practically speaking, this second provision only applied to Cuyahoga County.

Current Law Provided by House Bill 544 – appointment structure

HB 544 maintains the above structure established by HB 187 for those counties which have a municipality with at least 50 percent of the county’s population, as follows:

- 3 members of the board of county commissioners.
- 3 individuals nominated by the city planning commission of that city which exceeds 50 percent of the total population of the county, and appointed by the board of county commissioners.
- 3 individuals nominated by townships and appointed by the board of county

commissioners. If there are one or more home rule townships in the county, at least 1 of these 3 representatives shall be selected from nominations from a home rule township.

- 2 residents of the county selected by the board of county commissioners. The board shall have discretion in selecting 1 individual residing in the unincorporated area and representing townships, and 1 individual residing in the incorporated area and representing municipalities.

In counties with no 50 percent municipality and no home rule townships, HB 544 provides boards of county commissioners with complete discretion in appointing the 8 members of the county planning commission. This practice is consistent with the law prior to HB 187, as follows:

- 3 members of the board of county commissioners.
- 8 residents of the county appointed by the board of county commissioners.

In counties with no 50 percent municipality but one or more limited home rule townships, HB 544 provides a new composition:

- 3 members of the board of county commissioners.
- 1 resident of a limited home rule township in the county from persons nominated by home rule township(s) in the county, and appointed at the discretion of the board of county commissioners.
- 1 resident of the municipality with the largest population contained within the portion of the municipality located in the county from persons recommended by that municipality, and appointed at the discretion of the board of county commissioners.
- 6 residents of the county appointed by the board of county commissioners.

This new structure was a result of compromise between the Ohio Township Association and the Ohio Municipal League. *(Note: Under this scenario, the municipal representative is to be "recommended by that municipality." The statute does not specify if the nomination is to be from the city planning commission, as is required above when there is a 50 percent municipality in the county, or if the nomination is to be from city council or the mayor.)*

In counties containing two or less townships with unincorporated territory, the structure would remain the same as provided by HB 187. Again, this provision only applies to Cuyahoga County.

- 3 members of the board of county commissioners.

- 8 residents of the county appointed by the board of county commissioners. If the population of any city located in the county exceeds 50 percent of the total population of the county, the board of county commissioners shall select 3 of the appointive members from persons nominated by the planning commission of that city.

The bill also provides options to boards of county commissioners to respond to a situation where the membership of a county planning commission should be altered to comply with the above membership requirements. Specifically, the law provides that if at any time a change occurs within a county so that the population of a portion of a city within the county exceeds or no longer exceeds 50 percent of the total population of the county or a township becomes a limited home rule township, within 30 days after the effective date of either of those types of change, the board of county commissioners, in the board's discretion, may make changes on the commission by resolution so that its membership representation complies with the above provisions. If the board does not adopt a resolution to so change the commission's membership, the board shall phase in the necessary changes in the commission's membership by waiting until a member's term of office expires and appointing new members so as to meet the representation requirements as soon as possible without interfering with any member's term of office.

Implementation of Current Law Provided by House Bill 544 – appointment structure

Because of concern among county commissioners regarding HB 187's changes, HB 544 included a temporary law section that will enable boards of county commissioners to either implement HB 544's criteria within a 30 day window after the bill's effective date or to slowly adjust the membership to reflect the new law as new appointments come up. In order to exercise changes in the 30 day window, a board of county commissioners must pass a resolution providing that the commission's membership should comply with the representation requirements provided by HB 544 of the 123rd General Assembly. In doing so, the board of county commissioners may remove members from the commission and may appoint members to the commission whose appointments comply with those representation requirements. Absent such a resolution, as new members are appointed to the commission, the new members shall be appointed so as to meet the representation requirements established by HB 544.

ROAD IMPROVEMENT BONDS AND ASSESSMENTS TO BE ISSUED AND PAID UP TO OVER 20 YEARS INSTEAD OF 10 YEARS

Background

Ohio law authorizes boards of county commissioners to construct a county road or to improve, reconstruct or repair any existing county road. A board of county commissioners may pay for such improvements by assessing property that benefits from the road

improvement. County commissioners may also issue debt in the form of bonds to finance the overall cost of such improvements and may use semiannual assessments to retire the principal and interest on such debt. Prior to HB 544, the term of any assessments levied and bonds issued to pay for such improvements could not extend beyond 10 years and no more than 20 semiannual installments.

Current Law Provided by House Bill 544

HB 544 simply changed Section 5555.46 of the Revised Code to increase the number of years for which bonds could be issued for county road improvements that are financed with assessments from up to 10 years to 20 years. The bill also increases from 20 to 40 the number of semiannual installments which may be levied on benefitting properties to pay off bonds for county road improvements.

Increasing the number of years projects can be financed could lower semiannual installment payments. Some property owners may prefer a longer financing period so that their payments will be reduced and, perhaps, be more affordable. It is somewhat analogous to making mortgage payments on a house; it might be less expensive overall to finance a house for 5 or 10 years, but most individuals can not afford the larger payments and, therefore, choose to finance for 15 or 30 years.

This specific amendment was first brought to CCAO's attention by the law firm of Squire, Sanders and Dempsey. Existing county sewer improvement statutes (ORC Section 6117.251) and county water improvement statutes (ORC Section 6103.16) already permit county commissioners to issue bonds and levy assessments for up to 20 years. HB 544 simply harmonizes the assessment and bonding procedure for county road improvements with similar provisions of the county sewer and water improvement statutes.

This change was also sought by Butler County, but CCAO believes this change will be beneficial for other counties, particularly where industrial or commercial road improvements are contemplated.

ALTERNATES TO COUNTY PLANNING COMMISSIONS

Prior to HB 544, the law did not specifically provide that members of a county planning commission could select alternates to represent them on the commission in their absence. HB 544 provides that once an alternate is designated for a member of the planning commission, if that commission member is absent from a planning commission meeting, the alternate has the right to vote and participate in all proceedings and actions of the commission at that meeting as if that alternate were the commission member.

HB 544 provides 2 procedures for the naming of alternates. One procedure applies to county commissioners and the other procedure applies to appointive members of the commission. Two procedures were established to reflect the difference in how these individuals derive their membership. Specifically, individual county commissioners are

statutorily required to serve on the commission, while the remaining appointive members serve based on their appointments by the “board of county commissioners.”

A county commissioner may designate an alternate by sending a letter of appointment to the alternate and a copy of that letter to the clerk of the board of county commissioners. At the next regular meeting of the board, the clerk shall inform the board of the designation of the alternate, and the board is to enter the designation on the journal.

An appointive member of the planning commission may designate an alternate by sending a letter of appointment to the clerk of the board of county commissioners designating an individual to serve as that member’s alternate. At the next regular meeting of the board, the clerk is to inform the board of the designation of the alternate, which designation the board may either approve or disapprove. The board is to enter its decision on the journal and, if the alternate is approved, designate the name of the alternate on the journal. The clerk of the board shall notify the commission member of the board’s action, and the commission member shall inform the alternate.

A designated alternate is to serve at the pleasure of the member who makes the designation. Removal of an alternate must be made by a letter of removal, delivered and journalized by the same method that the alternate was designated.

HB 544 also requires any alternate to be a resident of the county. While the legislation does not require an appointive member’s alternate to reflect the member’s township or municipal interests, a board of county commissioners should be cognitive of the current balance between townships and municipalities on the commission, and strive to maintain such balance, if possible.

ZONING VIOLATION MAXIMUM FINE INCREASED

HB 544 increases the maximum fine for county and township zoning violations from \$100 to \$500 for each offense. These changes are made in ORC Sections 303.99 and 519.99, respectively. Zoning resolutions will need to be amended to implement this change if a lower amount appears in the resolutions. Zoning resolutions aimed at maintaining the highest possible fine could insert the \$500 amount or could simply reference the maximum fine amount established by ORC 303.99, for county zoning. The later will enable the fine to be increased automatically without subsequent changes to your zoning resolutions as future action is taken by the Ohio legislature.

CERTAIN NOTICE REQUIREMENTS FOR PLANNING COMMISSIONS

HB 544 requires a “county or regional planning commission” to send notice to all townships at least 30 days before a public hearing on the adoption or amendment of its subdivision regulations, pursuant to Section 711.10. A similar requirement was included in HB 187 last year that applied to “boards of county commissioners’ pursuant to Section 711.05. The

notice requirement for planning commission was inadvertently left out of HB 187. HB 544 fixes this oversight and simply provides consistency.

At the suggestion of individuals within Hamilton County, a second provision was included to allow these notices from planning commissions to be provided by either regular mail or “electronic mail.”

CONCLUSION

CCAO would like to thank Representative Jon Peterson for his sponsorship of HB 544. In addition, CCAO staff appreciates the Ohio Township Association’s assistance with this legislation and bulletin. Any errors or omissions are the sole responsibility of CCAO.