



COUNTY ADVISORY BULLETIN

CAB

Published by: County Commissioners Association of Ohio

37 West Broad Street, Suite 650 • Columbus, Ohio 43215-4195
Phone: 614-221-5627 • Fax: 614-221-6986 • www.ccao.org

Bulletin 2003-03

September 2003

HOUSE BILL 25 of 125th GENERAL ASSEMBLY GRANTS NEW AUTHORITY FOR COUNTY BUILDING CODES TO INCLUDE REGULATIONS CONCERNING EXISTING SURFACE AND SUBSURFACE DRAINAGE

Effective Date: October 29, 2003.

ORC Sections Affected: 307.37, 711.315 (amended) / 4740.14 (repealed).

Lead Sponsor: Gibbs (R- Lakeville).

House Co-Sponsors: Grendell (R-Chesterland), Peterson (R-Delaware), Seitz (R-Cincinnati), Otterman (D-Akron), McGregor (R-Gahanna), Core (R-Rushsylvania), Gilb (R-Findlay), Hollister (R-Marietta), Niehaus (R-New Richmond), Setzer (R-Vandalia), Wagner (R-Sycamore), DeBose (D-Cleveland), Domenick (D-Smithfield), Skindell (D-Lakewood), Carmichael (R-Wooster), Aslanides (R-Coshocton), Buehrer (R-Delta), Cates (R-West Chester), Chandler (D-Kent), Cirelli (D-Canton), Clancy (R-Cincinnati), Collier (R-Mount Vernon), Flowers (R-Canal Winchester), Hoops (R-Napoleon), Hughes (R-Columbus), Kearns (R-Springfield), Koziura (D-Lorain), S. Patton (D-Youngstown), Reidelbach (R-Columbus), Taylor (R-Uniontown), Wolpert (R-Hilliard).

Senate Co-Sponsors: Spada (R-Parma Heights), Amstutz (R-Wooster), Austria (R-Beavercreek), Harris (R-Ashland), Mumper (R-Marion), Stivers (R-Columbus).

Introduction

On July 30th, 2003 Governor Taft signed Substitute House Bill 25 (H.B. 25). The new law, which will become effective on October 29th, 2003, amends ORC 307.37 to allow county building code to include regulations that provide for a review of the specific effects of proposed new construction on existing surface or subsurface drainage.

During the 124th General Assembly, Rep. Tim Grendell (R-Chesterland) introduced H.B. 282 that was essentially the same bill as Sub. H.B. 25, however, while the bill passed the Ohio House, it did not receive final action by the Senate during the last session of the General Assembly. The purpose of this CAB is to explain the details of this new law.

Basic Enabling Authority – ORC 307.37(B)(3)(a).

H.B. 25 specifically authorizes a county building code to “include regulations that provide for a review of the specific effects of proposed new construction on existing surface or subsurface drainage”. These regulations may require 1) reasonable drainage mitigation, and 2) reasonable alteration of proposed new construction before a building permit is issued to prevent or to correct any adverse affects that the proposed new construction may have on existing surface or subsurface drainage.

What is Proposed New Construction? – ORC 307.37 (A).

As noted above, the new authority is limited to “proposed new construction”. This term is defined to mean “a proposal to erect, construct, repair, alter, redevelop, or maintain a single, two-family, or three-family dwelling or any structure that is regulated by the Ohio Building Code”. Under this definition, a county may essentially excise the new authority for all classes of buildings, even if it is not certified to administer the state building code.

Enactment of the New Regulations - ORC 307.37 (B) (3) (b).

To enforce the new authority, the county must adopt or amend a building code pursuant to ORC 307.37. The procedure for adopting or amending an existing building code is essentially the same and includes the following steps:

1. The board of county commissioners must hold a public hearing during at least two regular sessions of the board.
2. Notice of the public hearings must be published in a newspaper of general circulation once a week for two weeks immediately preceding the public hearings. The notice must include the date, time and place of the hearing.
3. The proposed regulations or amendments must be made available to the public at the office of the board.
4. After adoption, the regulations must be made available to the public at the office of the board, and notice of their availability and the section numbers of the regulations must be published in a newspaper of general circulation within 10 days after adoption or amendment of the regulations.
5. The regulations or amendment becomes effective on the 31st day following their adoption.

Restrictions on Content of Regulations – ORC 307.37 (B) (3) (a).

The new law places the following restrictions on the drainage regulations that may be adopted as a part of a county building code:

1. The regulations shall not be inconsistent with, more stringent than, or broader in scope than, standards adopted by the Natural Resource Conservation Service (NCRS/USDA).
2. The regulations shall not be inconsistent with, more stringent than, or broader in

scope than, rules adopted by EPA for reducing, controlling or mitigating storm water runoff from construction sites.

What Must be Included in the Regulations? - ORC 307.37 (B).

The statute also specifies that certain things must be included in the drainage regulations if they are adopted. These include the following:

1. The regulations must include a provision that allows a person who is registered under ORC Chapter 4703 (Architects) or ORC Chapter 4733 (Professional Engineers) to prepare and submit plans and other documents for review, provided that the person is authorized to prepare the plans and other documents under the person's registration. ORC 307.37 (B) (3) (a).
2. A procedure for the review of the specific effects of a proposed new construction on existing surface or subsurface drainage. ORC 307.37 (B) (3) (b). The procedure for review must include the following provisions:
 - a. A meeting that must be held not later than 30 days after an application for a building permit is filed or a review is requested. This meeting must be scheduled within 5 days after the application for a building permit is filed or a request for review is made. The applicant may agree, in writing, to extend the time period or to postpone the meeting to another date, time and place.
 - b. Written notice of the date, time and place of the meeting must be sent to the applicant by regular mail at least 7 days before the meeting.
 - c. The review of the application for a building permit must be completed within 30 days after it is filed or a review is requested, unless the applicant has agreed in writing to an extension or postponement. If the applicant has agreed to an extension or postponement, then the review must be completed within 2 days after the date of the extended or postponed meeting.
 - d. A complete review of the application for a building permit must include the issuance of any order of the county commissioners regarding necessary and reasonable mitigation and necessary reasonable alterations to the proposed new construction to prevent or correct any adverse effects on existing surface and subsurface drainage.
 - e. If the review is not completed within the 30-day period, or an extended period the applicant has agreed to, the proposed new construction is deemed to have no adverse effects and those effects shall not be a valid basis for the denial of a building permit.
 - f. In addition, the county must provide the applicant with a written statement of the right to appeal the denial of a building permit under ORC Chapter 2506. This written notice must be provided at the meeting or in an order for alterations to the proposed new construction.

Administration of Drainage Regulations – ORC 307.37 (B) (3) (c).

To administer the regulations the board may enter into an agreement with the county

engineer or “another qualified person or entity.” Prior to entering into any agreement, however, the board of county commissioners must obtain the advice of the county engineer.

The county engineer or other “qualified person or entity” would then be responsible for inspections and evaluations about what alterations are necessary to prevent or correct any adverse effects that a proposed new construction may have on surface or subsurface drainage. In most cases this means that a licensed professional engineer must perform these functions.

Relationship to Subdivision Regulations – ORC 711.131.

Generally, the drainage regulations included in a building code do not apply when the proposed development goes through subdivision review. The law specifically states that the regulations do not apply to any property that has been approved by a platting authority under ORC 711.05, 711.09, 711.10, or 711.131. This language would lead one to believe that both major platted subdivisions and minor subdivisions or “lot splits” are exempt from the drainage regulations in the building code.

However, it should be noted that the law also amends ORC 711.131 to specifically allow the consideration of the newly-authorized building code drainage regulations to be the basis for approval or denial of minor subdivisions or “lot splits”. This may be an item that should be reviewed with the county prosecutor. However, CCAO believes that the clear intent was to allow the application of the new drainage regulations to minor subdivisions, but not major subdivisions.

Conclusion

H.B. 25 grants counties a new tool to address drainage issues that occur when new development occurs. While some of the requirements in the bill are cumbersome, these are the result of a variety of interests who have grave concerns about new powers being granted that relate to land use and development. If you have questions about this new law contact **Larry Long** at llong@ccao.org. or **Brad Cole** at bcole@ccao.org.