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# COUNTY ADVISORY BULLETIN

**CAB**

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**Bulletin 2006-01**

**January 2006**

## **House Bill 181 of 125<sup>th</sup> General Assembly Creates Procedure for Suspending Elected Officials Charged With Felony Offenses Related to Their Conduct in Office; Also Bars All Persons Convicted of Specified Theft Offenses and Other Offenses From Holding Public Office or Public Employment**

Lead Sponsor: Representative Tim Schaffer (R-Lancaster).

House Co-Sponsors: McGregor (R-Gahanna), Willamowski (R-Lima), Allen (D-Dayton), Flowers (R-Canal Winchester), Brinkman (R-Cincinnati), Clyde Evans (R-Rio Grande), Setzer (R-Vandalia), Wolpert (R-Hilliard), Aslanides (R-Coshocton), Geoff Smith (R-Columbus), Buehrer (R-Delta), Carmichael (R-Wooster), Collier (R-Mount Vernon), Daniels (R-Greenfield), Domenick (R-Smithfield), David Evans (R-Newark), Faber (R-Celina), Gibbs (R-Lakeville), Gilb (R-Findlay), Hartnett (D-Mansfield), Harwood (D-Niles), Key (D-Cleveland), Niehaus (R-New Richmond), Olman (R-Toledo), Otterman (D-Akron), Seaver (D-Minster), Sferra (D-Warren).

Senate Co-Sponsors: Austria (R-Beavercreek), Spada (R-North Royalton), Jacobson (R-Dayton).

Revised Code Sections Affected: **3.16 (newly-enacted)**, 101.34, 102.01, 102.02, 102.031, 102.06, 102.99 (amended), 101.021, **2961.02 (newly-enacted)**.

Effective Date: May 18<sup>th</sup>, 2005.

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### *Bill Summary*

HB 181 creates a procedure under which a special commission, consisting of three retired judges, may suspend from office any elected local government official who has been charged with a felony offense that relates to the official's conduct in office. HB 181 also bars any person, not only an elected local government official, who is convicted of any of a number of specified offenses, from holding public office or public employment, or from serving in a volunteer capacity with specified private entities.

HB 181 also makes changes to the ORC related to the lobbying activities of, and the filing of financial disclosure statements by former state elected officials and former staff members of state elected officials. **This bulletin does not discuss those changes.**

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#### *1. Who is Covered by the Suspension Procedure?- ORC 3.16 (A) (2).*

HB 181 creates a procedure by which an elected official of any political subdivision, other than a judge of a court of record, may be suspended from his or her office if the official is charged with a felony in a state or federal court that relates to the official's administration of, or conduct in the performance of the duties of, the office.

For purposes of this suspension procedure, the elected officials of a "political subdivision" include the elected officers of any county, municipal corporation, township or school district. The term also includes elected officials of any "other body corporate and politic responsible for governmental activities in a geographic area smaller than the state." However, the effects of the bill are limited to elected officials of those entities. HB 181 uses the term "public official" to describe these persons and that is the term that also is used in this bulletin.

#### *2. How is the Suspension Procedure Set in Motion? – ORC 3.16 (A) and (B) (1).*

First, a public official of a political subdivision must be charged in a state or federal court with a felony. Second, the Attorney General, if he or she is prosecuting the case, or the county Prosecuting Attorney with the responsibility to prosecute the case, must determine that the felony relates to the public official's administration of, or conduct in the performance of the duties of, the public official's public office.

If either the Attorney General or the Prosecuting Attorney makes that determination, then the Attorney General or the Prosecuting Attorney must send a copy of the charging document to the

Chief Justice of the Ohio Supreme Court, with a request that the Chief Justice proceed with the appointment of a special commission as provided in the bill.

3. Notice of Suspension to Public Official – ORC 3.16 (B) (2).

After the Attorney General or the Prosecuting Attorney sends a copy of the charging document to the Chief Justice, with a request that the Chief Justice proceed with the suspension procedure, the Attorney General or Prosecuting Attorney must send a written notice of his or her action to the public official who is charged with the felony.

The notice must state that, not later than 14 days after the date of the notice, the public official may file a written statement with the Attorney General or the Prosecuting Attorney that either 1) voluntarily authorizes the Attorney General or Prosecuting Attorney to provisionally suspend the public official from office; or 2) sets forth the reasons why the public official should **not** be provisionally suspended from office.

4. Effect of Public Official's Decision to Accept a Voluntary Provisional Suspension From Office – ORC 3.16 (B) (2).

If the public official voluntarily agrees to allow his or her provisional suspension from office, then the Attorney General or Prosecuting Attorney must prepare a judgment entry for the federal or state judge presiding over the case. This judgment entry, when received and signed by the judge, will have the effect of immediately suspending the public official from office. The Attorney General or Prosecuting Attorney must immediately notify the Chief Justice of the provisional suspension by sending the Chief Justice the judgment entry.

Upon receipt of that judgment entry, the Chief Justice must then proceed with establishing a special commission. The provisional suspension remains in effect until the special commission enters its judgment in the case.

5. *Effect of an Elected Official Filing a Written Statement Contesting the Proposed Suspension – ORC 3.16 (B) (2).*

If the public official files a written statement with the Attorney General or Prosecuting Attorney setting forth the reasons why the public official should not be suspended from office, then the public official cannot, at that point in time, be provisionally suspended. The Attorney General or Prosecuting Attorney must send a copy of the public official's statement to the Chief Justice. Upon receipt of that statement, the Chief Justice must then establish a special commission to hear the public official's case.

6. Establishment of Special Commission – ORC 3.16 (C) (1).

Whether the elected official voluntarily agrees to provisional suspension from office (under 4 above), or submits a statement setting forth the reasons why he or she should not be suspended from office (under 5 above), the Chief Justice, at least 14 days after receiving a request from the Attorney General or Prosecuting Attorney to proceed with the process, must establish a special commission to hear the public official's case.

The special commission must be composed of three retired justices or judges of an Ohio court of

record. At least one of the three special commission members must be from the same political party as the public official charged with a felony. Members of the commission receive compensation for their services and are reimbursed, from funds appropriated to the Attorney General's office, for any expenses incurred.

Along with appointing the three special commission members, the Chief Justice must provide to the special commission all documents and materials pertaining to the case that the Chief Justice receives from the Attorney General or Prosecuting Attorney.

#### *7. Duties of Special Commission – ORC 3.16 (C) (2).*

Within 14 days after it is established, the special commission must make a preliminary determination related to the public official's administration of, or conduct in the performance of, the duties of the elected official's office, as covered by the felony charges.

To make the preliminary determination, the special commission must ask whether the public official's conduct 1) adversely affects the functioning of that office; **or** 2) adversely affects the rights and interests of the public. After considering these two questions and determining that its answer to one or both of them is yes, the special commission must then proceed to determine whether the elected official should be suspended from office permanently.

If the answer to both of the questions is no, then the special commission must make a preliminary determination that the public official is not to be suspended from office. This preliminary determination then becomes the special commission's final determination under ORC 3.16 (C) (3).

Upon making its preliminary determination, the special commission immediately must provide the public official with notice of the preliminary determination. This notice may be in writing, by telephone or in another manner.

#### *8. Elected Official's Right to Contest Preliminary Determination – ORC 3.16 (C)(2).*

If the special commission, in its preliminary determination, decides to suspend the public official from office, the public official may contest the determination by filing with the special commission a notice contesting the determination, within 14 days after the date of the notice to the public official.

The special commission, not later than 14 days after receiving notice from the public official contesting its preliminary determination, must allow the public official to appear at a meeting of the special commission to present his or her position.

The elected official may be accompanied by an attorney at this meeting, but the attorney is not allowed to act as counsel, advocate for the public official, present evidence or examine or cross-examine witnesses.

Meetings of the special commission are closed to the public and its records cannot be released to

the public or made available for inspection until the special commission issues its report.

At the end of the meeting, the special commission is required to make a final determination as to whether the public official's administration of, or conduct in the performance of the duties of, the office, as covered by the felony charges, adversely affects the rights and interests of the public. If the special commission makes such a determination, then the commission must proceed in accordance with the terms of HB 181 and suspend the public official. The suspension takes effect immediately upon the issuance of the report.

If the special commission does not make such a determination, then the public official cannot be suspended from office. If the public official is under a provisional suspension, the provisional suspension ends immediately upon the issuance of the report.

If the elected official does **not** file a notice contesting the preliminary determination within 14 days of receiving notice, then the preliminary determination of the special commission automatically becomes its final determination for the purpose of issuing its final report and carrying out the public official's suspension from office.

*9. Elected Officials Suspension from Office – Duration and Termination - ORC 3.16 (C) (4).*

A suspension that is imposed or continued under HB 181 continues in effect until one of the following occurs: 1) the public official is reinstated to office by an appeal to the Ohio Supreme Court (see section 10 below); 2) all charges against the public official are disposed of either by dismissal or by a finding or findings of not guilty; or 3) a successor is elected and qualified to serve the next succeeding term of the public official's office.

*10. Appeal of Suspension to Ohio Supreme Court – ORC 3.16 (D).*

HB 181 authorizes a public official who has been suspended by the special commission under the terms of the bill to appeal his or her suspension to the Ohio Supreme Court. The public official must make the appeal within 30 days of the date on which the report is issued by the special commission.

The Supreme Court must consider the appeal on an expedited basis. An appeal by a public official does not stay the suspension imposed or continued by the special commission. If the Supreme Court decides that the determinations and findings of the special commission are reasonable and lawful, the Court must affirm the suspension and enter final judgment in accordance with that decision.

After the Supreme Court has rendered final judgment, the public official could plead guilty to or be found guilty of, any felony with which the public official has been charged in connection with the case. If this occurs, the public official is liable for any amount of compensation paid to the official during the period of the suspension. The liability extends backward in time to the original date of the suspension as imposed by the special commission. The amount of compensation paid to the public official during that time period may be recovered by the political subdivision in a civil action filed in the appropriate court. ORC 3.16 (E).

If the Supreme Court decides that the determinations and findings of the Supreme Court are unreasonable **or** unlawful, the court must reverse and vacate the special commission's report, vacate the suspension, reinstate the public official, and enter final judgment in accordance with its decision.

11. *Effects of Suspension on Activities of the Public Official – ORC 3.16 (E).*

Any public official suspended from office under HB 181 cannot exercise any of the rights, responsibilities or powers of the holder of the office during the period of suspension. However, the public official retains the title of "holder of the office" and must continue to receive the compensation he or she is entitled to receive during the period of the suspension – until the official pleads guilty to, or is found guilty of, any felony with which the official is charged.

12. *Appointment of Replacement Official – ORC 3.16 (E).*

For the duration of the public official's suspension, a replacement official must be appointed or elected to perform the public official's duties of office. This replacement official must be appointed or elected in the manner provide by law for filling a vacancy in the office. In the case of county elected officials, the applicable law is contained in ORC 305.02. The replacement official would have all of the rights powers and responsibilities of the suspended public official. The replacement official also would be entitled to the same rate of pay as the suspended public official.

13. *Fiscal Effects on Counties.*

County commissioners and other county elected officials would experience increased costs related to replacing and compensating a replacement official (see section 12 above.) If a replacement official were in office for several months or longer, compensation costs could be in the thousands or tens of thousands of dollars.

A county also could face additional costs if it files a civil action to recover compensation paid to the public official during the course of his or her provisional suspension. In addition to possibly assuming additional personnel and court costs in such an action, the county might not recover all of the compensation paid to the public official during the course of his or her provisional suspension.

County prosecuting attorneys may experience additional costs for efforts spent determining if the felony charges relate to a public official's administration of, or conduct in, the performance of his or her duties. They also may face additional costs for transmitting copies of the charging documents to the Attorney General.

14. *Effect of Specified Felony Convictions on Future Public Office, Future Public Employment, and Future Volunteer Activities – ORC 2961.02*

The ORC currently contains provisions that make any person who is convicted of any offense of a specified nature ineligible to hold a public office or hold public employment in the state. For example, under ORC 2921.41 (C) (1), any public official who is convicted of, or pleads guilty to, the offense of "theft in office" is "forever disqualified from holding any public office, employment,

or position of trust” in Ohio.

Also, under ORC 2961.01, a person who is convicted of a felony under any state or federal law is incompetent to hold an “office of honor, trust, or profit” in Ohio, unless the conviction is reversed or annulled, or the person is granted a full pardon.

HB 181 expands the disqualifications against holding public office contained in current law. The disqualification provisions of HB 181 apply to all persons, not only public officials, convicted of any of a list of specified “disqualifying offenses.”

The disqualification against holding public office also extends under HB 181 to 1) holding any position of public employment with the state or a political subdivision or 2) serving in a volunteer capacity with any state agency, political subdivision, or private entity that receives any funds from the state or a political subdivision to perform an activity on behalf of the state agency or political subdivision. ORC 2961.02 (A) (1).

The disqualification provisions apply only in cases where the person’s holding of public office or public employment, or volunteer activity, involves “substantial management or control over the property or a state agency, political subdivision or private entity.” ORC 2961.02 (B).

“Disqualifying offense” is defined in HB 181 as **any** felony theft offense, or any other felony offense not formally classified as a “theft offense” but that involves fraud, deceit or theft. Also, the disqualifying offense may be one for which there is no specific disqualification contained in statute.

If a conviction for a disqualifying offense is later reversed, expunged or annulled, the person is no longer disqualified from holding public office or a position of public employment, or from serving in a volunteer capacity. ORC 2961.02 (C).

For more information on HB 181, contact Doug Putnam, CCAO Research & Information Manager at 614-221-5627 or [dputnam@ccao.org](mailto:dputnam@ccao.org)