



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 1999-10

OCTOBER 1999

HOUSE BILL 187 OF THE 123RD GENERAL ASSEMBLY MAKES CHANGES TO COUNTY PLANNING COMMISSION MEMBERSHIP, ZONING AND SUBDIVISION PROCEDURES, WATER AND SEWER AUTHORITY

Effective Date: September 20, 1999.

Revised Code Sections Affected: 109.14, 133.09, 309.09, 504.01, 504.02, 504.03, 504.04, 504.12, 504.13, 504.14, 504.16, 504.17, 504.18, 504.19, 504.20, 505.261, 505.262, 505.264, 505.37, 505.373, 505.60, 505.601, 505.602, 505.701, 709.50, 711.10, 713.22, 1901.026, 2921.421, 3737.46, 3767.03, 4301.28, 5543.01, 5543.09, 5549.02, 5549.021, and 5573.01.

Lead Sponsor: Olman (R-Maumee).

House Co-Sponsors: Jolivette (R-Hamilton), Boyd (D-Cleveland Heights), Buchy (R-Greenville), Cates (R-West Chester), Clancy (R-Cincinnati), Gerberry (D-Canfield), Harris (R-Ashland), Jacobson (R-Brookville), Krebs (R-Camden), Maier (D-Massillon), Mottley (R-West Carrollton), O'Brien (R-Cincinnati), Roman (R-Akron), Sulzer (D-Chillicothe), Taylor (R-Norwalk), Terwilleger (R-Maineville), Van Vyven (R-Sharonville), Williams (R-Akron), Young (R-Leroy), Opfer (D-Oak Harbor), Schuler (R-Cincinnati), Calvert (R-Medina), Evans (R-Newark), Buehrer (R-Delta), Tiberi (R-Columbus), Corbin (R-Dayton), Krupinski (D-Steubenville), Perz (R-Toledo), Hartnett (D-Mansfield), Verich (D-Warren), Vesper (R-New Richmond), Haines (R-Xenia), Schuring (R-Canton), Willamowski (R-Lima), Bender (D-Elyria), Winkler (R-Cincinnati).

Senate Co-Sponsors: Latell (D-Girard), Schafrath (R-Loudonville), Spada (R-Parma Heights), Blessing (R-Cincinnati), Gardner (R-Madison), Prentiss (D-Cleveland), White (R-Manchester), Drake (R-Solon), Nein (R-Middletown), Hagan (D-Youngstown), Armbruster (R-North Ridgeville), Latta (R-Bowling Green), Mumper (R-Marion), Cupp (R-Lima), Kearns (R-Springfield), DiDonato (D-New Philadelphia).

OVERVIEW

House Bill 187 (HB 187) is primarily an attempt by the Ohio Township Association (OTA) to make the limited home rule form of government, which was established by the legislature in 1991, more user-friendly to certain townships.

The bill modifies the procedure for certain townships to adopt limited home rule authority, and makes many changes relative to home rule townships and the traditional form of township government which are not discussed in this CAB.

This CAB will concentrate on other provisions of HB 187 that more directly impact county government including:

1. Changes to the membership of a county planning commission. These changes do not affect regional planning commissions.
2. Provisions related to voting on a recommendation on a proposed county zoning resolution and any amendments to a county zoning resolution by a county planning commission. Again, this provision does not apply to regional planning commissions and does not apply to voting on recommendations concerning township zoning.
3. A requirement that all townships receive notice from the Board of County Commissioners prior to the adoption or amendment of subdivision regulations.
4. Changes the current requirement that notice of meetings to consider or act on a subdivision plat be given to an affected township by regular instead of certified mail.
5. Authority for home rule townships to have independent engineers with the county engineer's approval.
6. Changes related to the provision of water and sewer service by home rule townships.

CHANGES IN MEMBERSHIP OF COUNTY PLANNING COMMISSION

Prior to HB 187 the law provided that membership on a county planning commission consist of eleven members including:

- Three county commissioners.
- Eight citizens appointed by the county commissioners. If the population of a city within the county exceeded 50 percent of the total county population, that city had at least three seats on the commission; such individuals were selected from those nominated by the city planning commission.

With the enactment of HB 187, the law now provides the following membership:

- Three county commissioners.
- Three representatives from municipalities. If the population of a city within the county exceeds 50 percent of the total county population, that city shall have at least three seats on the commission; such individuals are to be selected from those nominated by the city planning commission.
- Three representatives from the unincorporated area of the county. These individuals are to be selected from those names nominated by the townships within the county. If the county contains one or more limited home rule township(s), then at least one of the three unincorporated area representatives shall be from the limited home rule township(s).
- Two citizens of the county -- one residing in the unincorporated area representing townships and one residing in the incorporated area representing municipalities. These individuals shall be selected at the discretion of the board of county commissioners.

However, if a county contains two or less townships with unincorporated territory, HB 187 did not change the membership of the commission. In such case, a county planning commission shall consist of the following:

- Three county commissioners.
- Eight citizens appointed by the county commissioners. If the population of a city within the county exceeds 50 percent of the total county population, that city shall have at least three seats on the commission; such individuals shall be selected from those nominated by the city planning commission.

This exception was included in the bill to address a concern of ensuring balanced representation on the planning commission. If a county consisted of only one or two townships, the law does not “guarantee” that there should be at least four seats on the planning commission allocated to individuals representing or residing in townships. However, nothing prohibits a board of county commissioners from appointing four individuals from townships if the board chooses. ORC 713.22.

The legislation also provides that the change in composition of a county planning commission must be implemented so that any member serving on the board on the effective date of HB 187(September 20, 1999), serves out the member’s term of office, even if the membership would not then meet the new representation requirements established by HB 187. As new members are appointed to the commission, the new members shall be appointed so as to meet the new representation requirements as soon as possible without interfering with any member’s term of office.

A member's term of office is for a three year period, except when a commission is newly established and initial terms are staggered. HB 187 did not change the term of office, which is provided in ORC 713.22.

Finally, it should be stressed that this change does not apply to Regional Planning Commission established pursuant to ORC Chapter 713.

CONSIDERATION OF COUNTY ZONING BY COUNTY PLANNING COMMISSION

Some commissioners have expressed concern about their role as a member of a county planning commission as it relates to votes on issues related to county zoning. Because a county planning commission must make recommendations to the board of county commissioners on the adoption and amendment of a county zoning resolution, some commissioners feel they should not participate in a vote that is essentially a recommendation to themselves.

HB 187 **allows** a county planning commission to adopt a policy under which members of the board of county commissioners, as members of that commission, **must** abstain from participating and voting on the commission's recommendation, whenever a county planning commission is required by ORC 303.07 to approve or disapprove, or make suggestions about, a proposed county zoning resolution. This also applies to ORC 303.12 to recommend the approval or denial of a proposed amendment or approval of some modification of an amendment to the county zoning resolution. This provision, however, does not apply in the case of township zoning.

The policy may require that a quorum of the planning commission under these circumstances be determined on the basis of an eight-member commission instead of an eleven-member commission. ORC 713.22(D).

CHANGES SUBDIVISION NOTICE FROM CERTIFIED MAIL TO REGULAR MAIL & REQUIRES COMMISSIONERS TO NOTIFY TOWNSHIPS OF PROPOSED SUBDIVISION RULES OR AMENDMENTS

Prior to HB 187, when a plat was submitted for approval to a board of county commissioners, county planning commission, or regional planning commission for the adoption of a subdivision plat, those entities had to schedule a meeting to consider the plat and send a written notice of the meeting to the clerk of the board of township trustees of the township in which the plat is located. **Under former law, this notice was required to be sent by certified mail, return receipt requested. HB 187 changes this provision to require that the written notice be sent by regular mail. ORC 711.05 and 711.10.**

In addition, before a board of county commissioners may amend or adopt subdivision rules, HB 187 requires it to notify all the townships within the county of the proposed amendments or rules by regular mail at least 30 days before the public meeting at which

the proposed amendments or rules are to be considered. ORC 711.05.

It should be noted that this requirement only applies to subdivision regulations adopted under Section 711.05 of the Ohio Revised Code (ORC.). Section 711.10, which deals with subdivision regulations adopted by a county of regional planning commission, has not been changed in HB 187. Thus, while this requirement does not apply to this section, CCAO feels this was an oversight. CCAO anticipates a technical and consistency amendment in the near future.

HOME RULE TOWNSHIPS CAN HIRE INDEPENDENT ENGINEERS FOR ROAD WORK

Traditionally, the county engineer has been responsible for the establishment, care and oversight of not only county roads and bridges but also township roads. HB 187 allows a home rule township to hire an independent professional engineer to be in charge of or to assist the county engineer with the supervision of, the construction, reconstruction, resurfacing, or improvement of township roads. However, the home rule township must first notify the county engineer and gain the county engineer's approval if the independent professional engineer is to assist the county engineer.

If the independent professional engineer is in charge of any project, the county engineer must still review all of the independent engineer's plans for improvements and provide the board of township trustees with comments on those plans within ten working days after receiving them. The county engineer also must monitor all plans for improvements in order to maintain compliance with existing construction standards and thoroughfare plans, and coordinate construction time lines within the county. ORC 5543.01, 5543.09, and 5573.01.

If a home rule township hires an independent professional engineer, the township assumes any and all liability associated with the work of the independent engineer.

WATER AND SEWER SERVICES

Prior to HB 187, home rule townships had the authority to provide water services but could not provide sewer services. HB 187 limits the circumstances in which a home rule township can provide water and authorizes such townships to get into the sewer business. Provisions are included in the bill that bar a township from establishing new services to compete with existing public providers. This is because the infrastructure needed is very costly and often times financed with the help of state and federal programs. Public policy makers did not want to encourage a duplication of expensive infrastructure, particularly at the expense of taxpayers.

Specifically, HB 187 establishes a process for a home rule township interested in either water or sewer services or both. First, the township must develop a general service plan. After the plan is adopted, the board of township trustees must immediately notify the following entities of the township's intent to provide water or sewer services:

- The board of county commissioners, if territory served by a county water supply facility

or a county sewer district includes territory to be covered by the plan.

- The legislative authority of a municipal corporation that operates a water supply or sewer system in any of the territory to be covered by the plan.
- The board of trustees of any regional water and sewer district that includes any territory to be covered by the plan.

Those notified above have 30 days from the date of notification to comment and object in writing to the township's plan. Any objection may be based on the following:

- The county, municipality, or special district already provides the proposed service to the area proposed to be served by the township.
- The county, municipality, or special district has in its service plan provisions to provide the proposed water or sewer services in the future to provide the proposed area within a reasonable period of time.

Within 15 days after receiving an objection, the board of township trustees may request in writing to the objecting party that the issue of the township's proposed services be mediated. The mediation must be performed either by the Ohio Commission on Dispute Resolution and Conflict Management or by having each party select a mediator and having those two mediators select a third mediator, who together must conduct the mediation.

Within 45 days after a request for mediation is submitted, any mediation must be completed, and any agreements reached between the parties must be filed in writing with the parties. Thereafter, the respective governing boards may adopt the agreements, making those agreements binding on the parties. Or, if one or more of the agreed-upon points are rejected, that rejection must be considered a final decision of the governing board for purposes of an appeal. The board of township trustees may file an appeal under ORC Chapter 2506 regarding its provision of the proposed water or sewer services. In addition to any findings that the court may make under the Local Government Appellate Law, the court may determine that the county, municipality, or special district has not met the objection criteria described above, and therefore, the township may provide its proposed services. Or, in the alternative, the court may determine that the township could provide the proposed services more expediently than the other entities with no substantial increase in cost to users and, therefore, order that the township may provide its proposed water or sewer services.

HB 187 also allows a home rule township to provide water and sewer services by contract with any municipal corporation, county sewer district, or regional water and sewer district or any private operator. Prior to HB 187, home rule townships had limited contracting authority to provide water services.

ADOPTION OF LIMITED HOME RULE AUTHORITY FOR TOWNSHIPS MODIFIED

Prior to HB 187, any township, regardless of population, could adopt the limited home rule form of township government upon a majority vote of the township electorate. HB 187 provides that a township must have a population of at least 5,000 in the unincorporated area of the township in order to adopt the alternative form of government.

Those townships with 5,000 to 15,000 in population in the unincorporated area can adopt limited home rule authority if the board of township trustees passes a resolution, by a majority vote, to put the question before voters. If a majority of voters approve the measure, the township will then have limited home rule authority beginning January 1 of the coming year.

If a township has a population of more than 15,000 in the unincorporated area, there are two methods of adopting limited home rule authority. One option, as explained earlier, is for the board of township trustees to adopt a resolution, by majority vote, to put the issue before the voters. The second method entails the board of township trustees, after having had at least one public hearing, passing a resolution establishing limited home rule authority by unanimous vote. The resolution would go into effect within 30 days of passage unless a petition is filed requesting the board to submit the question of establishing a limited home rule government to a vote of the electorate. If a majority of the voters approve the measure, the township can exercise limited home rule authority beginning January 1 of the upcoming year.

A township with more than 15,000 population in the unincorporated area that has adopted limited home rule authority shall be called an "Urban Township." ORC 504.01 and 504.02.

If you have questions or need more information about HB 187, please contact CCAO Policy Analyst Cheryl Subler at (614) 221-5627 or csubler@ccao.org.