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S.B. 15*
134th General Assembly

Bill Analysis

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Version: As Reported by House State and Local Government

Primary Sponsor: Sen. Wilson

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SUMMARY

- Protects certain officers from liability for the loss of public funds when the officer has performed the officer's official duties with reasonable care.
- Makes the officers liable for loss of public funds resulting from the officer's negligence or other wrongful act.

DETAILED ANALYSIS

Fiscal officer liability

The bill modifies the standard for when certain fiscal officers are liable for the loss of public funds. These officers are: county auditor or treasurer; township fiscal officer or deputy fiscal officer; treasurer of a municipal corporation, auditor of a city, or other officer of a municipal corporation that has the duties of a treasurer or city auditor; treasurer or other fiscal officer of a community college district, technical college district, or state community college district; fiscal officer or deputy fiscal officer of the board of library trustees of a free public library; treasurer, auditor, or other fiscal officer of a county that has adopted a charter; and fiscal officer, treasurer, or compliance officer of a regional water and sewer district or other officer or designee performing those duties and functions. The standard for each is the same: an officer is not liable for the loss of public funds if the officer performed the officer's official duties with reasonable care, and the officer is only liable for the loss of public funds if the officer acted negligently, or committed some other wrongful act.¹

* This analysis was prepared before the report of the House State and Local Government Committee appeared in the House Journal. Note that the legislative history may be incomplete.

¹ R.C. 301.221, 319.41, 321.50, 507.14, 733.82, 3354.101, 3357.101, 3358.061, 3375.361, and 6119.61.

Under existing law, public officials generally are subject to strict personal liability for public money they receive or collect; this is a long-standing common law principle.² “Strict liability” is liability for loss resulting from the public official’s actions no matter what level of care the public official exercised. An exception exists for county treasurers for losses resulting from any investment reasonably made pursuant to law.³

Under the bill, the affected officers would no longer be strictly liable for any losses of public funds; instead, officers are liable only for losses resulting from the officer’s negligence or other wrongful act.

Charter counties

As described above, the provisions of the bill apply to the treasurer, auditor, or other officer having such duties for a county that has adopted a charter.⁴ This provision of the bill confirms continuing law, which provides that any reference in the Ohio Revised Code to particular county officers, boards, commissions, and authorities means, in the case of a county that has adopted a charter, the officer, board, commission, or authority of that county that exercises the same powers or perform the same acts, duties, or functions that are to be exercised or performed under the applicable section of law by officers, boards, commissions, or authorities of counties that have not adopted a charter.⁵

HISTORY

Action	Date
Introduced	01-26-21
Reported, S. Local Government & Elections	03-09-21
Passed Senate (33-0)	03-17-21
Reported, H. State & Local Gov’t	---

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² R.C. 9.39, not in the bill. See also *Seward v. National Surety Co.*, 120 Ohio St. 47 (1929) and *State ex rel. Ohio AG v. Burns*, 2020 Ohio App. LEXIS 2728, paragraph 15 (2nd Dist., 2020) (“Before the enactment of R.C. 9.39, Ohio common law imposed strict liability on a public official for the loss of public funds, even if the loss was not the result of ‘illegal or otherwise blameworthy’ conduct. R.C. 9.39 ‘represents a codification’ of the common law, ‘imposing strict liability on public officials for the loss of public funds with which they have been entrusted.’ Thus, under Ohio common law as codified by R.C. 9.39, a public official is strictly liable for the loss of public funds over which the official exercises control . . .”).

³ R.C. 135.39, not in the bill.

⁴ R.C. 301.221; Ohio Constitution, Article X, Section 3.

⁵ R.C. 1.62, not in the bill.