



OHIO LEGISLATIVE SERVICE COMMISSION

Bill Analysis

Wendy H. Gridley

Sub. H.B. 454

132nd General Assembly
(As Passed by the House)

Reps. Patterson and Arndt, Ashford, Seitz, Becker, Reece, Hambley, Holmes, Boyd, Brown, Anielski, Antonio, Barnes, Craig, Green, Lepore-Hagan, Miller, O'Brien, Perales, Rogers, Sheehy, Sprague

BILL SUMMARY

- Requires a township to offer compensation to owners of certain unused cemetery lots or rights who come forward before the lot or right is reclaimed.
 - Requires a township to publish on its website the notice required under continuing law before reentering a lot.
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CONTENT AND OPERATION

Background

Under existing law, townships have a right of reentry to resell unused cemetery lots¹ that were sold after 1986 (post-1986 lots) because of legislation enacted in that year that allows townships a right of reentry by deed or contract. For lots sold before 1986, there was no statutory language authorizing the right of reentry and although the General Assembly eventually provided for a right of reentry for those lots, the Attorney General determined in 2009 that a township could not reclaim its interest in sold but unused cemetery lots under a theory that the burial easement was extinguished by abandonment on the basis of nonuse.² Because the pre-1986 owners of record to the burial easements and their heirs have acquired legal rights to their cemetery lots,

¹ A board of township trustees is empowered by R.C. 517.07 to sell lots in township cemeteries to the public.

² 2009 Op. Att'y Gen. No. 2009-006. See also, 1972 Op. Att'y Gen. No. 72-031, as modified, and 1990 Op. Att'y Gen. No. 90-066.

compensation must be afforded to them. The bill, primarily, is providing for the payment of compensation to those owners (see **COMMENT**).

Compensation to cemetery lot owner for reclaiming lot

Under continuing law, a township may reclaim its interest in an unused "pre-1986"³ cemetery lot if the township provides notice to the owner and the owner does not respond within 90 days.⁴ The bill increases this period to 180 days and provides that, if an owner responds during that time period, the township must offer to (1) allow the owner to retain or renew their interest in the lot at no cost, (2) provide the owner a different lot or right at no cost, or (3) provide the owner 80% of the owner's original purchase price. The bill also allows a township, at any point, to repurchase a pre-1986 lot from the owner for a mutually agreed-upon price.⁵

For "post-1986 lots,"⁶ continuing law allows the township and owner to enter into an agreement whereby the township pays the owner 80% of the original purchase price if the township reclaims its interest in the lot or right because the owner does not renew the owner's interest. Under the bill, the township must offer to pay the 80% as under current law, or to provide the owner a different lot or right at no cost.⁷

For both pre- and post-1986 lots, the bill requires a township to publish notice of its reentry on its website. Continuing law requires the township to send notice to an owner whose address is known or to publish the notice in the newspaper if the address is not known.⁸

COMMENT

The Ohio Constitution provides that, "Private property shall ever be held inviolate, but subservient to the public welfare. When taken . . .," compensation must be

³ Lots purchased before July 24, 1986, and entombment rights purchased before September 29, 2015. These are the effective dates of previous legislation that applied new regulation prospectively to "post-1986 lots," therefore creating different treatment of the two types of lots.

⁴ For deeds not containing a termination date, a township sets the time period.

⁵ R.C. 517.073. This authority exists for post-1986 lots under R.C. 517.07.

⁶ Lots purchased on or after July 24, 1986, and entombment rights purchased on or after September 29, 2015.

⁷ R.C. 517.07.

⁸ R.C. 517.07 and 517.073.



made to the owner.⁹ Although the bill provides compensation to a pre-1986 lot owner who responds *before* the notice period ends, a court may find that applying the law to an owner who responds *after* the notice period ends constitutes an unlawful taking without compensation.¹⁰ This issue exists under current law and is not resolved by the bill. The option the bill provides to an owner to receive 80% of the original purchase price may not constitute due or adequate compensation in some cases. For example, a lot purchased for \$100 in 1920 may be worth \$1,200 in 2018; \$80 is significantly less than today's fair market value and probably would not be considered due compensation. This is not an issue under continuing law for post-1986 lots because lot owners agree to be subject to the 80% term. In other words, the township is utilizing its *contractual right* to reclaim its interest in the lot and compensate the owner 80% of the purchase price as authorized under the statute.

HISTORY

| ACTION | DATE |
|----------------------------------|----------|
| Introduced | 12-21-17 |
| Reported, H. State & Local Gov't | 02-28-18 |
| Passed House (92-1) | 06-20-18 |

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⁹ Ohio Const., art. I, sec. 19.

¹⁰ 2009 Op. Att'y Gen. No. 2009-006.

