



Ohio Legislative Service Commission

Bill Analysis

Wendy H. Gridley

Sub. H.B. 413*

131st General Assembly

(As Reported by S. State & Local Government)

Reps. Brinkman, Hambley, Becker, Ruhl, Blessing, Hill, Boose, Hayes, Burkley, Thompson, Vitale, Sweeney, Zeltwanger, Terhar, Hackett, Hood, Buchy, Green, Retherford, Anielski, Ryan, Rogers, Conditt, Amstutz, Antonio, Arndt, Brenner, Brown, Celebrezze, Craig, Cupp, Derickson, Dever, Duffey, Ginter, Henne, Manning, McClain, M. O'Brien, Patterson, Pelanda, Reineke, Rezabek, Schaffer, Scherer, Sprague, Strahorn, Young

BILL SUMMARY

- Allows a board of township trustees to hold an executive session to consider the sale or other disposition of unneeded, obsolete, or unfit-for-use property.
- Decreases from 3,500 to 2,500 the minimum population of a township that may adopt a limited home rule government.
- Allows a township to provide recycling services and to levy a tax against or charge persons receiving the service.
- Expands a township's authority to provide items to assist the township in guarding against the occurrence of fires and protecting the property and lives of its citizens.
- Allows a township to levy a tax inside the ten-mill limitation for the provision of fire and rescue services, and expands a township's current authority to levy a tax to provide fire equipment to include additional types of equipment.
- Expands a subdivision's authority to levy a tax outside the ten-mill limitation for the provision of fire equipment to include additional types of equipment and other related costs.

* This analysis was prepared before the report of the Senate State & Local Government Committee appeared in the Senate Journal. Note that the list of co-sponsors and the legislative history may be incomplete.

- Expands a subdivision's authority to levy a tax outside the ten-mill limitation for the provision of police services to include other related costs.
- Expands a board of township trustee's authority to pay for group life insurance to include the provision of that insurance for all employees.
- Includes maintenance of public roads and highways and sewer and water lines as a public infrastructure improvement for which counties, townships, and municipal corporations may use tax increment financing.
- Allows a board of township trustees to use proceeds from the sale of cemetery lots or levy a tax sufficient for the purpose of maintaining and improving entombments.
- Includes, expressly, mausoleums as an entombment under Township Cemetery Law.
- Allows a board of township trustees, as it considers necessary, to purchase, maintain, and improve entombments.
- Reduces from 30 to 20 days the amount of time within which a party in interest must request a hearing before a board of township trustees removes, repairs, or secures dangerous buildings or structures.
- Allows for unlimited reappointments of members of the Ohio Small Government Capital Improvements Commission instead of the current allowance of two additional terms.
- Allows a board of township trustees to impose a permit fee of up to \$50 per application instead of a flat fee of \$50 per application for driveway cuts or excavations in township highways or highway rights of ways.
- Authorizes boards of township trustees and boards of park commissioners to expend funds for the public purpose of presenting community events open to the public in their parks and at other recreational facilities.
- Authorizes a board of township trustees of an urban township to provide for off-street parking for motor vehicles.
- Includes an intent statement of the General Assembly regarding the definition of "owner" for purposes of the Annexation Law.
- Repeals a provision of law allowing a township to provide places for procuring water for persons and animals on public highways in the township.



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CONTENT AND OPERATION

Board of township trustees may hold executive session to consider disposition of certain property

The bill allows a board of township trustees to hold an executive session to consider the sale or other disposition of unneeded, obsolete, or unfit-for-use property.¹ Generally, Ohio's Open Meetings Law requires a board of township trustees to conduct deliberations upon official business only in a meeting open to the public. However, a board may hold an executive session, which is a portion of an open meeting from which the public is excluded, to consider certain matters set forth under continuing law. Two trustees must determine to hold such a session during a regular or special meeting, and, a resolution or other formal action by a board must be adopted or taken at an open meeting. Under current law, any discussion by a board regarding the sale or other disposition of unneeded, obsolete, or unfit-for-use property may occur only at an open meeting of the board.²

¹ A board of township trustees must sell or otherwise dispose of such property in accordance with the requirements under R.C. 505.10, not in the bill.

² R.C. 121.22.



Decrease minimum township population required to adopt limited home rule government

The bill decreases, from 3,500, to 2,500, the minimum population in the unincorporated territory of a township that may adopt a limited home rule form of government upon satisfying other conditions set forth under continuing law.³

Township may provide recycling services

The bill allows a board of township trustees to provide recycling services or to contract with a municipal corporation, county, or independent contractor for the provision of those services. Under current law, a board may provide or contract for the provision of only waste collection, transfer, and disposal services.⁴ For these existing services, continuing law allows a township to impose a charge or levy a sufficient tax within the ten-mill limitation against persons receiving waste disposal services. The bill expands this authority to apply to the provision of recycling. So, under the bill, a township that has created a waste disposal district⁵ may levy a sufficient tax within the ten-mill limitation upon all taxable property in the district, or a township that provides or contracts for the provision of recycling services may establish equitable charges to be paid to the township by every person whose premises are served.⁶

Provision of fire and rescue equipment

The bill expands a township's authority to provide⁷ items to assist the township in guarding against the occurrence of fires and protecting the property and lives of its citizens. Continuing law specifies that a township may provide any fire apparatus, mechanical resuscitators, or other equipment, appliances, materials, fire hydrants, and water supply for fire-fighting purposes. The bill expands this by including "fire and rescue" as a purpose for which such items may be provided and by specifying a township also may provide underwater rescue and recovery equipment. The bill similarly allows the provision of these items by a joint fire district, municipal corporation, or combination of townships and political subdivisions jointly. For a

³ R.C. 504.01(A).

⁴ R.C. 505.27.

⁵ R.C. 505.28, not in the bill.

⁶ R.C. 505.29 and 505.31.

⁷ By purchase, lease, lease with an option to purchase, or other method.



township, continuing law requires that when the estimated cost of these items exceeds \$50,000, the township must award the contract by competitive bidding.⁸

Inside ten-mill limitation tax levy for provision of fire and rescue services

The bill allows a township to levy a sufficient tax within the ten-mill limitation upon all taxable property in the township or in a fire district to provide fire and rescue services. And, the bill expands a township's current authority to levy a tax to provide and maintain certain fire equipment to include mechanical resuscitators, underwater rescue and recovery equipment, and other fire equipment.⁹

Outside ten-mill limitation tax levy for provision of fire and rescue services

The bill expands a subdivision's authority to levy a tax in excess of the ten-mill limitation for the provision and maintenance of fire equipment to include mechanical resuscitators, underwater rescue and recovery equipment, or other fire equipment and to include the payment of other related costs. Such a levy is subject to the approval of the electors.¹⁰

Issuance of bonds for provision and maintenance of fire equipment

Continuing law prohibits a township from issuing bonds for the purpose of providing certain fire equipment unless the issuance is approved by the electors when the cost of the equipment is below a specified amount. The bill expands this prohibition to include the maintenance of fire equipment, and includes mechanical resuscitators and underwater rescue and recovery equipment.¹¹

Outside millage tax levy for provision of police services

The bill expands a subdivision's authority to levy a tax in excess of the ten-mill limitation for certain specified expenses related to the operation of a police department to include the payment of other related costs. Such a levy is subject to the approval of the electors.¹²

⁸ R.C. 505.37.

⁹ R.C. 505.39.

¹⁰ R.C. 5705.19(I).

¹¹ R.C. 505.40.

¹² R.C. 5705.19(J).

Insurance for township officers and employees

The bill expands the authority of a township to provide group life insurance to its officers and employees. Current law allows a township to provide and pay all or part of the cost of group life insurance to insure the lives of officers and full-time employees of the township. The bill eliminates the limitation that employees be full-time.¹³

Tax increment financing

The bill includes continued maintenance of public roads and highways and water and sewer lines in what may be a public infrastructure improvement for purposes of tax increment financing. Current law includes public roads and highways and water and sewer lines within the meaning of a public infrastructure improvement, but does not address continued maintenance. In effect, the bill allows a county, township, or municipal corporation to finance a project involving the maintenance of public roads and highways and water and sewer lines using tax increment financing.¹⁴

Township Cemetery Law

The bill allows a board of township trustees to levy a tax sufficient for the purpose of defraying the expenses of maintaining and improving entombments, including mausoleums, columbaria, and other interment rights. Under continuing law, a board may levy a tax sufficient to defray the expenses of the purchase or appropriation, and the enclosing, care, supervision, repair, and improving, of lands for cemetery purposes.¹⁵ Similarly, the bill allows a board to use proceeds from the sale of cemetery lots for the purpose of maintaining and improving entombments, including mausoleums, columbaria, and other interment rights. Generally, current law requires that the proceeds be used only in maintaining, improving, beautifying, and embellishing cemetery grounds, except a board also may use the proceeds to purchase or appropriate additional land for cemetery use if certain requirements are met.¹⁶

Under the bill, a board of township trustees, as it considers necessary, may purchase, maintain, and improve entombments, including mausoleums, columbaria, and other interment rights.¹⁷ Finally, the bill expressly provides, under existing

¹³ R.C. 505.602.

¹⁴ R.C. 5709.40(A)(7); R.C. 5709.73 (township TIFs) and R.C. 5709.77 and 5709.78 (county TIFs), none of which are in the bill.

¹⁵ R.C. 517.03.

¹⁶ R.C. 517.08.

¹⁷ R.C. 517.11.



provisions of Township Cemetery Law, that a mausoleum is a type of entombment. An entombment expressly includes a columbarium and other interment rights under continuing law.¹⁸

Township culvert or excavation permit fees

The bill changes the current \$50 permit application fee for driveway culverts or making an excavation in a township highway or highway right-of-way to a fee of *up to* \$50 per application.¹⁹

Request for hearing before township removal or repair of dangerous buildings

The bill changes the amount of time within which a party in interest must request a hearing after receiving notice of the township's intention to pursue action to remove any insecure, unsafe, or structurally defective building or other structure. Current law allows the request to be sent within 30 days after the township's notice was mailed. The bill requires the request for a hearing to be sent within 20 days after the township notice was mailed.²⁰

Off-street parking authority for urban townships

The bill authorizes a board of township trustees of an urban township²¹ to lay out, establish, construct, maintain, and operate, within the unincorporated territory of the township, off-street parking facilities for motor vehicles. For this purpose the board is authorized to acquire by purchase, gift, devise, exchange, lease, or sublease any existing off-street parking facilities or any real estate or interest in real estate required for the construction of the parking facilities. In addition, the board may exercise the power of eminent domain in the manner provided in state law.²² Land acquired for this purpose is not tax exempt unless the facility owned and operated by the township is used exclusively for a public purpose and there is no charge for the privilege of parking in the facility.²³

¹⁸ R.C. 517.07 and 517.073.

¹⁹ R.C. 5571.16.

²⁰ R.C. 505.86.

²¹ R.C. 504.01(B). An urban township is one that has adopted limited home rule and has a population of 15,000 or more in the unincorporated territory.

²² R.C. 163.01 to 163.22 (not in the bill).

²³ R.C. 504.24 and 5709.10.



Reappointments to the Ohio Small Government Capital Improvements Commission

The bill removes the current limitations on reappointments to the Ohio Small Government Capital Improvements Commission. Currently, commission members may be reappointed to serve two additional terms, except that no member appointed to an initial term of three years may be reappointed to more than one additional term. The bill allows reappointments without limitation.²⁴

Township funds used for community events

The bill authorizes boards of township trustees and boards of park commissioners of township park districts to expend general fund money, in the case of townships, and money from the treasury of the township park district, in the case of park commissioners, as well as revenue derived from property taxes levied for park and recreational purposes for the public purpose²⁵ of presenting community events that are open to the public in their parks and at other recreational facilities. Under continuing law, boards of township trustees and boards of park commissioners may establish public parks.²⁶ And, a body or board vested with authority by the board of township trustees may maintain parks, playgrounds, playfields, gymnasiums, public baths, swimming pools, or indoor recreation centers.²⁷ Although the bill authorizes the expenditure of funds from revenues derived from property taxes levied for parks and recreational purposes to present "community events" open to the public at township parks and recreational facilities, it does not define "community events."²⁸ The bill specifies that this expenditure of funds is for the public purpose of presenting community events at public parks and recreational facilities.

Township provision of watering places

The bill eliminates a current law provision that permits a township to provide and then, if provided, requires a township to maintain suitable places for procuring water for persons and animals on public highways in the township. Currently, a board

²⁴ R.C. 164.02.

²⁵ The expenditure of public funds must be for a public purpose. See *State ex rel. McClure v. Hagerman*, 155 Ohio St. 320 (1951); 2015 Op. Att'y Gen. No. 2015-007.

²⁶ R.C. 505.261 and 511.23.

²⁷ R.C. 755.13.

²⁸ R.C. 505.261, last paragraph, 511.23(H), and 755.13(B). Perhaps "community events" may include such things as concerts, movies, arts and crafts fairs, festivals, or fireworks displays, but they are not designated by the bill.



of township trustees may, by resolution, abandon any watering places that are no longer necessary.²⁹

Reference correction

The bill changes a Revised Code reference regarding soil and water conservation district programs. H.B. 64 (131st General Assembly) renumbered the relevant Revised Code chapter. The bill corrects the reference to the renumbered chapter.³⁰

Intent statement regarding the meaning of "owner" under the annexation law

The bill includes a statement of the General Assembly's intent³¹ regarding the meaning of "owner" for purposes of the annexation law.³² The statement denounces decisions of the Fifth³³ and Third Appellate Districts,³⁴ and approves of the Ohio Supreme Court's decision in *City of North Canton v. City of Canton*, 114 Ohio St.3d 253 (2007). The bill states that the General Assembly's intent is expressed in the the plain language of R.C. 709.02(E)³⁵ and by the Ohio Supreme Court in *North Canton*.

Although the *City of North Canton* case concerns the subject of standing, the court holds that the railroad is the party with the right to challenge the exclusion of railroads from the definition of "owner," not a third party who was not a party to the annexation. In *dicta*, the court states that the railroad is not an owner under the statute and therefore its signature was not required on the petition for annexation; the court does not reach the merits of the Due Process or Equal Protection claim as it was not raised by the railroad.

Unlike the *dicta* in the *North Canton* decision, suggesting that a railroad may never be an "owner" for purposes of R.C. 709.02(E), the *Lawrence Township* case suggests that a *railroad's* owner status must be determined on the basis of whether the *railroad* title holder owned the land under the tracks or just the right-of-way easement. The

²⁹ R.C. 5571.11 (repealed).

³⁰ R.C. 5705.19(VV).

³¹ Section 4 of the bill.

³² See R.C. 709.02(E).

³³ *Lawrence Township v. Canal Fulton*, 2009-Ohio-769; 2009 Ohio App. LEXIS 634 (5th Dist. Feb. 17, 2009).

³⁴ *State ex rel. National Lime and Stone Company v. Board of Marion County Commissioners*, 2016-Ohio-859; 2016 Ohio App. LEXIS 799 (3rd. Dist. March 7, 2016).

³⁵ See Comment 2.



analysis used by the court in *Lawrence* relies upon another Supreme Court case³⁶ using a similar analysis to determine whether a person (*not a railroad*) owning land under a roadway is to be considered an owner for purposes of signing a type—II annexation petition. Similarly, the court in *National Lime and Stone* found the railroad to be an "owner" because its interest was not that of a right of way held in fee, but rather it was a fee simple owner by general warranty deed; the court did not accept that entities such as railroads, regardless of interest, could be excluded from the definition of "owner." Citing the Supreme Court in the *Butler* case,³⁷ the Third District court found the railroad owner's property interest to be "no less undeniable and definite" than that of a landowner owning land underneath a roadway easement.

COMMENT

R.C. 709.02(E) provides that for purposes of the Annexation Law, "owner" or "owners" means "any adult individual who is legally competent, the state or any political subdivision as defined in section 5713.081 of the Revised Code, and any firm, trustee, or private corporation, any of which is seized of a freehold estate in land; except that easements and any railroad, utility, street, and highway rights-of-way held in fee, by easement, or by dedication and acceptance are not included within those meanings"

HISTORY

ACTION	DATE
Introduced	12-14-15
Reported, H. Local Gov't	04-13-16
Passed House (96-0)	04-20-16
Reported, S. State & Local Gov't	---

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³⁶ See *State ex rel. Butler Twp. Bd. of Trustees v. Montgomery County Bd. of County Comm'rs*, 112 Ohio St.3d 262 (2006)

³⁷ *Id.*

