



Ohio Legislative Service Commission

Final Analysis

Wendy H. Gridley

Sub. H.B. 413

131st General Assembly
(As Passed by the General Assembly)

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

Sens. Uecker, Eklund, Faber, Hite, Seitz, Tavares, Thomas

Effective date: September 28, 2016

ACT 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 township authority to provide items to assist in guarding against fires and protecting the property and lives of its citizens.
- Allows a township to levy a tax inside the ten-mill limitation for fire and rescue services, and expands a township's authority to levy a tax for fire equipment to include additional types of equipment.
- Expands a subdivision's authority to levy a tax outside the ten-mill limitation for fire equipment to include additional types of equipment and other related costs.
- Expands a subdivision's authority to levy a tax outside the ten-mill limitation for police services to include other related costs.

- Expands township authority to provide group life insurance for full-time employees to include all employees.
- Authorizes counties, townships, and municipal corporations to use tax increment financing for a project involving the continued maintenance of public roads and highways and sewer and water lines.
- Allows townships to use proceeds from the sale of cemetery lots or levy a tax to maintain and improve entombments.
- Includes, expressly, mausoleums as an entombment under Township Cemetery Law.
- Allows a township to purchase, maintain, and improve entombments.
- Reduces from 30 to 20 days the time within which a party 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 allowing 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 to present public community events in their parks and at other recreational facilities.
- Authorizes an urban township's board of township trustees 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 allowing a township to provide places for procuring water for persons and animals on public highways in the township.



CONTENT AND OPERATION

Executive sessions for disposition of property

The act expands the exceptions under which a board of township trustees may hold an executive session. It 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. Continuing law provides procedures that a board must follow to sell or otherwise dispose of such property.¹ Ohio's Open Meetings Law generally requires a board to conduct deliberations on 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. Two trustees must determine to hold an executive session during a regular or special meeting, and, the board must adopt a resolution or take other formal action at an open meeting. Under former law, any discussion by a board regarding the sale or other disposition of unneeded, obsolete, or unfit-for-use property could occur only at an open meeting of the board, but not in an executive session.²

Township population for limited home rule government

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

Recycling services

The act allows townships to provide recycling services or to contract with a municipal corporation, county, or independent contractor to provide those services. Under former law, a township could provide or contract for only waste collection, transfer, and disposal services.⁴ For these services, continuing law allows a township to impose a charge or levy a sufficient tax within the ten-mill limitation against persons receiving the services. The act expands this authority to include recycling services. So, under the act, a township that has created a waste disposal district⁵ may levy a sufficient tax within the ten-mill limitation on all taxable property in the district, or a

¹ R.C. 505.10, not in the act.

² R.C. 121.22.

³ R.C. 504.01(A).

⁴ R.C. 505.27.

⁵ R.C. 505.28, not in the act.



township that provides or contracts for recycling services may establish equitable charges to be paid to the township by every person whose premises are served.⁶

Fire and rescue equipment

The act expands a township's authority to provide items to assist the township in guarding against fires and protecting property and lives. 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 act expands this by including "fire and rescue" as a purpose for which those items may be provided and by specifying that a township also may provide underwater rescue and recovery equipment. The act similarly allows a joint fire district, municipal corporation, or combination of townships and political subdivisions jointly to provide these items. For a township, continuing law requires that when the estimated cost of these items exceeds \$50,000, the township must award the contract by competitive bidding.⁷

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

The act allows a township to levy a 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, it expands a township's 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.⁸

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

The act expands a subdivision's authority to levy a tax over 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. The tax levy is subject to voter approval.⁹

Bonds for fire equipment

Unless the voters approve the issuance when the cost of the equipment is below a specified amount, continuing law prohibits a township from issuing bonds to provide certain fire equipment. The act expands this prohibition to include the maintenance of

⁶ R.C. 505.29 and 505.31.

⁷ R.C. 505.37.

⁸ R.C. 505.39.

⁹ R.C. 5705.19(I).

fire equipment, and includes mechanical resuscitators and underwater rescue and recovery equipment.¹⁰

Outside millage tax levy for police services

The act expands a subdivision's authority to levy a tax over the ten-mill limitation for certain specified expenses related to the operation of a police department to include the payment of other related costs. The tax levy is subject to voter approval.¹¹

Insurance for township officers and employees

The act expands a township's authority to provide group life insurance for its full-time officers and employees to include other officers and employees by eliminating the full-time limitation.¹²

Tax increment financing

The act includes continued maintenance of public roads and highways and water and sewer lines as permitted public infrastructure improvements for tax increment financing purposes. Former law included public roads and highways and water and sewer lines within the meaning of a public infrastructure improvement, but did not address continued maintenance. In effect, the act 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.¹³

Township Cemetery Law

The act allows a board of township trustees to levy a tax to defray the expenses of maintaining and improving entombments, including mausoleums, columbaria, and other interment rights. Under continuing law, a board may levy a tax to defray the expenses of the purchase or appropriation, and the enclosing, care, supervision, repair, and improving, of lands for cemetery purposes.¹⁴ The act allows a board to use proceeds from the sale of cemetery lots to maintain and improve entombments, including mausoleums, columbaria, and other interment rights. Former law generally required

¹⁰ R.C. 505.40.

¹¹ R.C. 5705.19(J).

¹² R.C. 505.602.

¹³ 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 act.

¹⁴ R.C. 517.03.



that the proceeds be used only in maintaining, improving, beautifying, and embellishing cemetery grounds, except a board could also use the proceeds to purchase or appropriate additional land for cemetery use if certain requirements were met.¹⁵

Under the act, a board may purchase, maintain, and improve entombments, including mausoleums, columbaria, and other interment rights.¹⁶ Additionally, the act includes a mausoleum as a type of entombment. Under continuing law, an entombment also includes a columbarium and other interment rights.¹⁷

Culvert or excavation permit fees

The act allows flexibility by changing the \$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.¹⁸

Removal or repair of dangerous buildings

The act shortens the time within which a party 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. The act requires the party to send the request for a hearing within 20 days after the township mails the notice. Former law allowed the party to send the request within 30 days after the township mailed the notice.¹⁹

Off-street parking authority for urban townships

Under ongoing law, an urban township is one that has adopted limited home rule and has a population of 15,000 or more in the unincorporated territory.²⁰ The act authorizes a board of township trustees of an urban township to establish, maintain, and operate, within the unincorporated territory, off-street parking facilities for motor vehicles. To do so, the board can acquire by purchase, gift, devise, exchange, lease, or sublease any existing off-street parking facilities or any land or interest in land required to construct the parking facilities. In addition, the board may exercise the power of

¹⁵ R.C. 517.08.

¹⁶ R.C. 517.11.

¹⁷ R.C. 517.07 and 517.073.

¹⁸ R.C. 5571.16.

¹⁹ R.C. 505.86.

²⁰ R.C. 504.01(B).



eminent domain as provided in Ohio law.²¹ The land is not tax exempt unless the facility that is owned and operated by the township is used exclusively for a public purpose and there is no charge to park in the facility.²²

Ohio Small Government Capital Improvements Commission

The act removes the former limitations on reappointments to the Ohio Small Government Capital Improvements Commission. The act allows reappointments without limitation. Formerly, Commission members could be reappointed to serve two additional terms, except that no member appointed to an initial term of three years could be reappointed to more than one additional term.²³

Funds for community events

The act authorizes boards of township trustees and boards of park commissioners of township park districts to expend general fund money, for townships, and money from the treasury of the township park district, for park commissioners, as well as revenue from property taxes levied for park and recreational purposes, for the public purpose²⁴ 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.²⁵ 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.²⁶

Provision of watering places

The act eliminates a provision of law that authorized a township to provide and then, if provided, required a township to maintain, suitable places for procuring water for persons and animals on public highways in the township. Under former law, a

²¹ R.C. 163.01 to 163.22, not in the act.

²² R.C. 504.24 and 5709.10.

²³ R.C. 164.02.

²⁴ 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.

²⁵ R.C. 505.261 and 511.23.

²⁶ R.C. 755.13.



board of township trustees could, by resolution, abandon any watering places that were no longer necessary.²⁷

Reference correction

The act corrects a Revised Code reference regarding soil and water conservation district programs. In 2015, H.B. 64 of the 131st General Assembly renumbered the relevant Revised Code chapter. The act changes the reference to the renumbered chapter.²⁸

Intent statement regarding "owner" under the Annexation Law

The act includes a statement of the General Assembly's intent²⁹ regarding the meaning of "owner" under the Annexation Law.³⁰ The statement denounces decisions of the Fifth³¹ and Third Appellate Districts³² (in 2009 and 2016, respectively), and approves of the Ohio Supreme Court's 2007 decision in *City of North Canton v. City of Canton*.³³ The act states that the General Assembly's intent is expressed in the plain language of R.C. 709.02(E) and by the Ohio Supreme Court in *North Canton*.

Under continuing law, 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

²⁷ R.C. 5571.11 (repealed).

²⁸ R.C. 5705.19(VV).

²⁹ Section 4.

³⁰ See R.C. 709.02(E).

³¹ *Lawrence Township v. Canal Fulton*, 2009-Ohio-769; 2009 Ohio App. LEXIS 634 (5th Dist. Feb. 17, 2009).

³² *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).

³³ 114 Ohio St.3d 253 (2007).



Although the decision in *North Canton* concerns the legal concept of standing, the court holds that the railroad has the right to challenge the exclusion of railroads from the definition of "owner," but a third party who was not a party to the annexation does not have that right. In *dicta*, the court states that the railroad is not an owner under the statute and therefore its signature was not required on the annexation petition; 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 *North Canton*, suggesting that a railroad may never be an "owner" for purposes of R.C. 709.02(E), the Fifth District 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 analysis used by this court relies upon an Ohio Supreme Court case³⁴ 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 Third District court 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 this Ohio Supreme Court case,³⁵ 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.

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	05-25-16
Passed Senate (33-0)	05-25-16
House concurred in Senate amendments (96-0)	05-25-16

16-HB413-131.docx/ks

³⁴ See *State ex rel. Butler Twp. Bd. of Trustees v. Montgomery County Bd. of County Comm'rs*, 112 Ohio St.3d 262 (2006)

³⁵ *Id.*

