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# OHIO LEGISLATIVE SERVICE COMMISSION

Office of Research  
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Office

H.B. 242  
133<sup>rd</sup> General Assembly

## Final Analysis

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**Version:** As Passed by the General Assembly

**Primary Sponsors:** Reps. Lang and Jones

**Effective date:** January 15, 2021

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### SUMMARY

- Prohibits local governments, for 12 months after the act's effective date, from imposing a tax, fee, assessment, or other charge on auxiliary containers (for example, a plastic or paper bag), the sale, use, or consumption of those containers, or on the basis of receipts received from the sale of the containers.
- For 12 months after the act's effective date, specifically authorizes a person to use an auxiliary container for purposes of commerce or otherwise.
- Clarifies that the state anti-littering law (prohibiting the improper deposit of litter) applies to auxiliary containers.

### DETAILED ANALYSIS

#### Auxiliary containers

The act modifies the law governing "auxiliary containers," which are single-use or reusable packaging such as bags, cans, bottles, or other containers. These containers may be made of materials such as plastic, glass, metal, or cardboard and are designed for transporting food, beverages, or other merchandise from or at a restaurant, grocery store, or other retail establishment.<sup>1</sup> In particular, the act does all of the following:

1. For a period of 12 months after the act's January 15, 2021, effective date, prohibits a municipal corporation, charter county, or limited home rule township from imposing a tax, fee, assessment, or other charge on auxiliary containers, the sale, use, or

<sup>1</sup> R.C. 3767.32(D); Section 3(A).

consumption of the containers, or on the basis of receipts received from the sale of the containers (see “**Local fee and tax prohibitions**,” below);<sup>2</sup>

2. For a period of 12 months after the act’s effective date, specifically authorizes a person to use an auxiliary container for any purpose. (It is unclear how this authorization impacts a ban on auxiliary containers that has been enacted by a municipal corporation or charter county and that is in effect during this time period (see **COMMENT 1**.) The act specifies that, despite this authorization, nothing in the act may be construed to prohibit or limit the authority of a county, municipal corporation, or solid waste management district to implement a voluntary recycling program;<sup>3</sup>
3. Clarifies that the state anti-littering law prohibiting the improper deposit of litter applies to auxiliary containers. Thus, the act prohibits a person from improperly depositing an auxiliary container on public property, private property not owned by the person, or in or on waters of the state. A violation is a third degree misdemeanor and a sentencing court may require the violator to remove litter from property or the waters of the state.<sup>4</sup>

## **Local fee and tax prohibitions**

### **Municipal corporations**

Municipal corporations are endowed by the Ohio Constitution with home rule powers that authorize them to exercise powers beyond those provided in state law and, in certain respects, contrary to state law.<sup>5</sup> In particular, municipal corporations may impose taxes without explicit state authorization to do so.<sup>6</sup> However, the Ohio Constitution allows the General Assembly to enact laws limiting their power to levy taxes and assessments.<sup>7</sup> Indeed, state law prohibits municipalities from levying several types of taxes, including sales taxes and gross receipts taxes.

The act further restricts municipal taxing power by prohibiting municipal corporations from imposing a tax on auxiliary containers, on their sale, use, or consumption, or on the basis of receipts received from their sale. It also prohibits a municipal corporation from imposing a fee, assessment, or other charge on any of those bases (see **COMMENT 2**).<sup>8</sup>

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<sup>2</sup> R.C. 301.30, 504.04(B)(8), and 715.013(B).

<sup>3</sup> Sections 3 and 4.

<sup>4</sup> R.C. 3736.32 and 3767.99, not in the act.

<sup>5</sup> Ohio Constitution, Article XVIII, Section 3.

<sup>6</sup> *Gesler v. City of Worthington Income Tax Bd. of Appeals*, 138 Ohio St.3d 76; 2013-Ohio-4986; 3 N.E.3d 1177.

<sup>7</sup> Ohio Constitution, Article XIII, Section 6 and Article XVIII, Section 13.

<sup>8</sup> R.C. 715.013(B).

## Charter counties

In general, counties possess only those powers expressly delegated to them by state law or necessarily implied from those powers.<sup>9</sup> However, the Ohio Constitution allows a county (with voter approval) to adopt a charter that may endow it with the same home rule powers exercised by municipal corporations, including the power of taxation.<sup>10</sup> Only two counties in Ohio have adopted charters: Cuyahoga and Summit. However, both counties' charters specifically disclaim the power to levy any tax other than the taxes permitted under state law for noncharter counties.<sup>11</sup>

As with municipal corporations, the act prohibits a charter county from imposing a tax, fee, assessment, or other charge on auxiliary containers, on their sale, use, or consumption, or on the basis of receipts received from their sale (see **COMMENT 2**). But the act specifies that charter counties may still impose their general sales and use taxes on auxiliary containers to the extent that their sale is taxable or becomes taxable in the future under the state's sales and use tax law.<sup>12</sup>

## Limited home rule townships

Similar to counties, townships are generally limited to acting in accordance with powers delegated to them under state law.<sup>13</sup> State law authorizes certain townships with at least 3,500 residents to form a limited home rule government. A limited home rule township may exercise home rule powers, subject to certain exceptions. Among the exceptions is a prohibition against levying taxes not authorized under state law for all townships.<sup>14</sup> Accordingly, even a limited home rule township is prohibited from levying taxes not authorized by state law. But, this does not necessarily imply that it lacks the power to impose fees or other charges for regulatory purposes that are not regarded as taxes.

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<sup>9</sup> See *Geauga County Bd. of Comms. v. Munn Rd. Sand & Gravel*, 67 Ohio St.3d 579, 621 N.E.2d 696 (1993); *State ex rel. Kuntz v. Zangerle*, 130 Ohio St. 84 (1935), syllabus, paragraph 1.

<sup>10</sup> Ohio Constitution, Article X, Section 3.

<sup>11</sup> Article I, Section 1.02, Charter of Cuyahoga County, available at: Article I, Section 1.02, Charter of Cuyahoga County, available at: <http://council.cuyahogacounty.us/en-US/Charter-CuyahogaCounty.aspx>, and Article I, Section 1.02, Charter of Summit County, available at: <https://council.summitoh.net/files/18486/file/summitcountycharter.pdf>.

<sup>12</sup> R.C. 301.30. Current sales and use tax law appears to exempt a broad range of items, some of which might qualify as auxiliary containers, when purchased by retailers for their customers' use – see R.C. 5739.02(B)(15).

<sup>13</sup> See *State ex rel. Schramm v. Ayres*, 158 Ohio St. 30, 106 N.E.2d 630 (1952) and *Drees Co. v. Hamilton Twp.*, 132 Ohio St.3d 186, 2012-Ohio-2370, 970 N.E.2d 916.

<sup>14</sup> R.C. 504.04(A)(1).

The act expressly prohibits limited home rule townships from imposing a fee, assessment, or other charge on auxiliary containers, on their sale, use, or consumption, or on the basis of receipts received from their sale.<sup>15</sup>

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## COMMENT

1. For a limited time period, the act authorizes any person to use an auxiliary container for any purpose. It also applies the state anti-littering law to the improper disposal of those containers. It is unclear how a municipal ordinance or charter county resolution (enacted by a municipal corporation or county under its home rule authority)<sup>16</sup> that prohibits persons from using auxiliary containers interacts with this general authorization.<sup>17</sup>

2. For a limited time period, the act prohibits municipal corporations and charter counties from imposing a “fee, assessment, or other charge” on auxiliary containers, on their sale, use, or consumption, or on the basis of receipts received from their sale.<sup>18</sup> The Ohio Constitution and county charters appear to allow state law’s limitation on each subdivision’s respective taxing power. However, it is unclear whether the Ohio Constitution authorizes the General Assembly to limit “fees and other charges” that a municipal corporation or charter county might impose for regulatory or other public welfare purposes.<sup>19</sup>

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## HISTORY

Action	Date
Introduced	05-13-19
Reported, H. State & Local Gov’t	06-27-19
Passed House (58-35)	12-11-19
Reported, S. Local Government, Public Safety, & Veterans Affairs	05-26-20
Passed Senate (23-9)	05-27-20
House concurred in Senate amendments (58-35)	09-23-20

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<sup>15</sup> R.C. 504.04(B)(8).

<sup>16</sup> Ohio Constitution, Article X, Section 3 and Article XVIII, Section 3.

<sup>17</sup> See *Canton v. State*, 95 Ohio St.3d 149, 2002-Ohio-2005, 766 N.E.2d 963.

<sup>18</sup> R.C. 301.30 and 715.013(B).

<sup>19</sup> See *Drees, infra.* for discussion of legal distinction between taxes versus fees and other government exactions.