



OHIO LEGISLATIVE SERVICE COMMISSION

Bill Analysis

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Sub. H.B. 454

132nd General Assembly
(As Reported by H. State and Local Government)

Reps. Patterson and Arndt, Ashford, Seitz, Becker, Reece, Hambley, Holmes, Boyd, Brown

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

Compensation to cemetery lot owner for reclaiming lot

Under continuing law, a township may reclaim its interest in an unused "pre-1986"¹ cemetery lot if the township provides notice to the owner and the owner does not respond within 90 days.² 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, (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.³

¹ 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.

² For deeds not containing a termination date, a township sets the time period.

³ R.C. 517.073. This authority exists for post-1986 lots under R.C. 517.07.

For "post-1986 lots,"⁴ 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.⁵

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.⁶

COMMENT

A township generally must conduct appropriations of property in accordance with Chapter 163. of the Revised Code, which in part requires that notice be provided to a person whose property is subject to appropriation and that due compensation⁷ be paid to an owner whose property is appropriated.⁸ Although current law and the bill provide notice and compensation to a lot owner, a township may be subject to legal challenge for failure to follow all of the procedures established under Chapter 163. For instance, filing a petition for appropriation in the proper court.⁹

Additionally, Ohio's Constitution provides that, "Private property shall ever be held inviolate, but subservient to the public welfare. When taken....," compensation must be made to the owner.¹⁰ Although the bill provides compensation to a pre-1986 lot owner who responds before the notice period ends, a court may find an application of the law to an owner who responds after the notice period ends constitutes an unlawful taking without compensation.¹¹ This issue exists under current law and is not resolved by the bill. Finally, the option the bill provides to an owner to receive 80% of the

⁴ Lots purchased on or after July 24, 1986, and entombment rights purchased on or after September 29, 2015.

⁵ R.C. 517.07.

⁶ R.C. 517.07 and 517.073.

⁷ Generally, fair market value. *Columbia Gas Transmission Corp. v. An Exclusive Natural Gas Storage Easement*, 67 Ohio St.3d 463 (1993).

⁸ 2009 Op. Att'y Gen. No. 2009-006; R.C. Chapter 163.

⁹ R.C. 163.05, not in the bill.

¹⁰ Ohio Const., art. I, sec. 19.

¹¹ 2009 Op. Att'y Gen. No. 2009-006.



original purchase price may not constitute due compensation in some cases. For instance, 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 rather than any *appropriation authority*.

HISTORY

ACTION	DATE
Introduced	12-21-17
Reported, H. State & Local Gov't	02-28-18

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