



Sub. H.B. 417

123rd General Assembly
(As Passed by the General Assembly)

Reps. O'Brien, Winkler, Schuler, Bateman, Callender, Corbin, Hartnett, Patton, Hoops, Evans, Clancy, Verich, Luebbers, Peterson, Young, Tiberi, Perry, Stevens, Barnes, Cates, Aslanides

Sens. Schafrath, Gardner, Blessing

Effective date: *

ACT SUMMARY

- Establishes the following as possible sources of revenue for township park districts: fines, fees associated with leases of portions of a park or parks for the exclusive use of an individual or organization for an event, fees generally for the use of park facilities and services, and other types of rates, charges, or rents.
- Permits a board of township park commissioners to lease facilities from other political subdivisions or private sources, to lease suitable lands from other entities, and to lease to other entities real or personal property of the district not currently needed for park purposes.
- Removes the current limit of \$750 a month on the use of township park district credit cards.
- Permits a board of township park commissioners to sell park land with the approval of the board's appointing authority, instead of upon the affirmative vote of the township electors.
- Requires that fines collected for violations of township park district bylaws and rules be paid to the township park district.

* *The Legislative Service Commission had not received formal notification of the effective date at the time this analysis was prepared.*

- Requires that 75% of the acreage owned by a township park district be located in the township.
- Requires that the members of boards of township park commissioners be electors, rather than "resident freeholders," and that all such commissioners serve three-year terms.
- Permits a township park district "executive" to appoint district officers and employees if so authorized by the board of township park commissioners.
- Permits a board of township trustees to make specified types of contributions to a board of park commissioners of either a county or township park district without approval of the relevant appointing authority of the park commissioners.
- Requires a county auditor, before a board of township trustees and a board of township park commissioners exchange property, to certify in writing that the current market value of the land that each board will receive is at least equal to the current market value of the land exchanged, plus any cash or other consideration that will be received as part of the exchange.
- Removes the requirement that township park district park land exchanged with a board of township trustees be used by that board for park purposes.
- Permits a township to submit to its voters a combined tax levy for recreational purposes and greenspace.
- Permits for a limited 90-day period the conversion of a township park district's parks into township parks if the district was created before 1955, the district's park commissioners are appointed by the board of township trustees, and the township meets a specified population and acreage requirement.
- Makes other changes in the Township Park District Law.

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CONTENT AND OPERATION

Payments for the use of township park district parks

Under former law, township park districts had to have *free public parks*. The act eliminates the requirement that these parks be free and grants specific authority to a board of township park commissioners to charge fees for the use of any facilities and services of the parks, regardless of when they were acquired (see **COMMENT**). In addition, the act permits a board to enter into lease agreements with an individual or organization that provide for the exclusive use of a specified portion of the park or parks within the district by that individual or organization for the duration of a specified event. These lease agreements may permit either the board or the event's sponsor to charge a fee to participants in and spectators at the event covered by the agreement. (Secs. 511.18(A), 511.20, 511.21, 511.22, 511.23(A), (B), and (G), and 755.16(A).)

Boundaries of a township park district and park land location

Former law required that the boundaries of a township park district be coterminous with the township boundaries (1) unless the township had ceased to exist since the establishment of the district and (2) except that, when a municipal corporation was located within the boundaries of the township and the district owned park land within the municipal corporation, any change in township boundaries had no effect on the district's boundaries (sec. 511.18(B)).

The act removes that language defining the *boundaries* of a township *park district*. However, it retains other language in the Township Park District Law that provides that a property tax may be levied on property within the township and on property within any municipal corporation that is within the township, any municipal corporation that was within the township when the district was established, or any municipal corporation the boundaries of which are coterminous with or include the township. Thus, as a practical matter, that description may be where the district boundaries lie. (Secs. 511.18(B), 511.19(A), and 511.27.)

The act also removes a requirement that *park land* operated by a township park district must be within the township unless there is incorporated territory within the district, in which case the district could operate parks outside the township. The act continues former law that authorizes a township park district that contains only unincorporated territory and that operated a park or parks outside township boundaries prior to July 18, 1990, to continue to operate those parks, but the act repeals former law's provision that such a district could not expand park land or establish new parks outside the township. Instead, the act (1) specifies that further acquisitions of land by *such a district* will not affect the district's boundaries and (2) generally requires with respect to *any township park district*, regardless of the boundaries of the district itself, that at least 75% of the acreage owned by the district be located within the boundaries of the township, unless the township has ceased to exist since the establishment of the district. (Secs. 511.18(B) and 511.23(B).)

Membership of boards of township park commissioners

Under continuing law, the board of township park commissioners generally is appointed by the court or a judge of the court of common pleas that creates the township park district or, if the entire district is contained within the unincorporated territory of the township, by the board of township trustees. The act specifies that an entire district is contained "within the unincorporated area of the township" if the electors of the unincorporated area would be the only persons entitled to vote on a township park district property tax levy regardless of where the real property owned by the district is located. (Secs. 511.18(A) and 511.27(B).)

Under continuing law, boards of township park commissioners appointed by a court consist of *three members*; boards appointed by a board of township trustees consist of *three or five members*. Former law permitted a board of township trustees to convert, by resolution, a three-member board of township park commissioners that the *board of township trustees had appointed* to a five-member board. The act also permits a board of township trustees to convert, by resolution, a five-member board of township park commissioners that the *board of township trustees has appointed* to a three-member board. During a transition from five to three members, board members whose terms have not yet expired will continue to serve until the expiration of their terms. A board of township trustees cannot change the number of park commissioners on a board appointed by the court or a judge of the court of common pleas. (Sec. 511.19(C) and (D).)

Former law required that a three-member board of township park commissioners consist of three suitable "resident freeholders." Members of five-member boards had to meet a similar qualification. The act requires instead that

the board consist of three or five "electors." This change is consistent with the finding of recent court decisions that a statutory restriction of the holding of public office to landowners (freeholders) is an unconstitutional (unreasonable and arbitrary) classification denying equal protection under the Fourteenth Amendment to the United States Constitution when the statute applies to more than just landowners.¹ (Sec. 511.19(A) and (B).)

Former law provided that members of a three-member board of township park commissioners serve three-year staggered terms, while members of a five-member board of township park commissioners serve one-year terms. The act instead provides that members of five-member boards eventually also will serve three-year staggered terms. (Sec. 511.19(A) and (B); Section 3 of the act.)

Lease of land and facilities; credit cards

Continuing law permits a board of township park commissioners to accept a conveyance of, purchase through a variety of means, acquire through exchange, or appropriate through an exercise of eminent domain authority "suitable lands" for park district purposes. The act extends this authority to permit a board to *lease* suitable lands as well. The act also permits a board of township park commissioners to *lease facilities* from other political subdivisions or private sources. (Sec. 511.23(B).)

The act permits a board of township park commissioners to authorize the use of the district's credit card without any statutory monetary limits. Former law limited the debt incurred with a district credit card to no more than \$750 a month. (Sec. 511.234.)

Lease, exchange, and sale of township park district property

Under former law, the electors decided whether to sell any lands held by a township park district. The election could be initiated by the board of township park commissioners or by a petition of the electors of the township. (Sec. 511.25--repealed by the act.) The act removes this method for selling township park district land and creates the following procedures for either leasing, exchanging, or selling that land or other property held by the district:

(1) A board of township park commissioners may *lease real or personal property* owned by the district that it determines is not currently needed for park

¹ For example, see *Cunningham v. Crabbe* (1992), 73 Ohio App.3d 596; *Turner v. Fouche*, 396 U.S. 346 (1970); *Chappelle v. Greater Baton Rouge Airport District*, 431 U.S. 159 (1977); and *Quinn v. Millsap*, 491 U.S. 95 (1989).

purposes. The board must determine the time period during which the property will not be needed. If it finds that competitive bidding on a lease is not feasible, it may lease the property without taking bids. (Sec. 511.23(H).) Also, the board, without competitive bidding, may *exchange property* owned by the district for property owned by the state, another political subdivision, or the federal government, on terms that it considers desirable (sec. 511.23(I)).

(2) If a board of township park commissioners finds that any lands the board has acquired are not necessary for the purposes for which they were acquired, it may *sell and dispose of those lands* upon terms that the board considers advisable and may reject any purchase bid it receives that the board determines does not meet its terms for sale. With one exception noted in (3) below, no lands may be sold without first giving notice of the board's intention to sell them by publication once a week for four consecutive weeks in a newspaper of general circulation in the township. The notice must contain an accurate description of the lands being offered for sale and must state the time and place at which sealed bids for the lands will be received. If the board rejects all the purchase bids, it may reoffer the lands for sale. (New sec. 511.25.)

(3) A board of township park commissioners may sell park land not necessary for district purposes to another political subdivision, the state, or the federal government without giving notices or taking bids as otherwise required by the act (new sec. 511.25).

(4) No land acquired by a township park district may be sold without the approval of the court of common pleas or the board of township trustees, whichever appointed the district's board of park commissioners (new sec. 511.25).

Exchange of township park district property

Continuing law permits a board of township park commissioners to acquire land for use by the township park district through an exchange in which the board leases or conveys to the township all or part of the land located within the township to which the district holds title in exchange for the lease or conveyance of township land from the board of township trustees to the board of township park commissioners. Former law required that any lands so exchanged be used *for only park purposes*. (Sec. 511.241.)

The act *removes* the requirement that lands so exchanged be used for only park purposes. Additionally, the act provides that, before an exchange becomes effective, the county auditor must certify in writing to the board of township trustees and the board of park commissioners that the current market value of the land that each board will receive is at least equal to the current market value of the

land exchanged, plus any cash or other consideration that will be received as part of the exchange. (Sec. 511.241.)

Issuance of revenue securities

The act authorizes a township park district, in addition to its other statutory powers to issue securities and subject to approval, by resolution, by the appointing authority of the board of township park commissioners, to issue revenue securities (but not general obligation securities) (1) to fund or refund revenue securities previously issued or (2) to raise money to pay for and improve parks or recreational facilities (sec. 511.30(A), (B), (D), and (I)). These securities, their transfer, and any income from them are free from state taxation (sec. 511.30(H)).

The district must establish rates, charges, or rents for the use, availability, or rental of the facilities to which the financing relates. Those rates, charges, or rents must be designed to provide revenues to the district sufficient to pay the costs of all current expenses of the facilities payable by the district, to pay the debt charges on the securities, and to establish and maintain any contractually required special funds relating to the securities or the facilities. (Sec. 511.30(C).)

Securities issued under the act must be secured only by the following (sec. 511.30(D)):

(1) A pledge of and lien upon the revenues of the district derived from its ownership or operation of the facilities. Those revenues include rates, charges, or rents and any interest subsidies or debt charges, grants, or other available payments by federal or state agencies.

(2) Covenants of the district to maintain sufficient rates, charges, and rents to produce revenues sufficient to pay all current expenses of the facilities payable by the district, to pay the debt charges on the securities, and to establish and maintain any contractually required special funds relating to the securities or the facilities;

(3) If the securities are anticipatory securities, the issuance of revenue securities in anticipation of the issuance of which the securities are issued;

(4) A pledge of and lien on the proceeds of any securities issued to fund or refund the revenue securities.

Unless different provisions are made in trust agreements, leases, or other necessary documents (see below), as long as any of the revenue securities mentioned above remain outstanding, all parts of the facilities whose revenues are pledged must remain under the control of the board of township park

commissioners, whether any parts of the facilities are leased to or operated by others or are in, or later come within, the boundaries of any municipal corporation. The facilities also must remain subject to the power and duty of the board to fix and collect rates, charges, or rents for the use of facilities. The documents referred to above are those that authorized township park district officers must execute to provide for the pledge, protection, and disposition of the pledged revenues from which debt charges and any special fund deposits are to be paid. (Sec. 511.30(E) and (F).)

Violations of township park district laws

A board of township park commissioners has authority under continuing law to adopt bylaws and rules prohibiting intoxicating liquor in the district's parks, controlling the operation of motor vehicles in the parks, governing the parks generally, and providing for the protection and preservation of all property and natural life in the parks. Violations of a bylaw or rule are minor misdemeanors for a first offense and a misdemeanor of the third degree for each subsequent offense under continuing law. The act specifies that fines levied and collected for violations of the bylaws and rules must be paid into the district's treasury, and the board may use the fine moneys for district purposes. (Sec. 511.23(F); sec. 511.99--not in the act.)

Superintendent of parks

Former law permitted a board of township park commissioners to appoint a superintendent for the township park district parks. The act authorizes appointment of *an executive*, rather than a superintendent, for the district's parks, and permits a board to require the executive to appoint all other necessary district officers and employees (and fix their compensation and prescribe their duties) instead of the board doing these things itself as under former law. A board also may designate the executive or another person as the clerk of the board. (Sec. 511.23(E).)

Approval of donations by appointing authorities

Under former law, before a board of township park commissioners could accept any donation or trust involving money, land, or other property, the court of common pleas of the county, or the board of township trustees if the park commissioners were appointed by the board of township trustees, had to approve the terms of the donation or trust. The act removes this requirement. (Sec. 511.23(C).)

The act also permits a board of township trustees to contribute moneys, *lands* (added by the act), supplies, equipment, office facilities, and other personal

property or services to a board of park commissioners of either a *county park district* or a *township park district* without the approval of the relevant appointing authority of the park commissioners (replacing former law's probate judge) if the territory of the park district overlaps, in whole or in part, the territory of the township. These contributions must be, as under former law, for purposes of park planning, acquisition, management, and improvement. (Sec. 511.37.)

Authorization for townships to propose a tax levy for the combined purposes of recreation and greenspace preservation

Under continuing law, townships, like other taxing authorities, may declare by resolution that the amount of taxes that may be raised within the ten-mill limitation will be insufficient to provide for the necessary requirements of the township and that it is necessary to levy a tax in excess of that limitation for specified purposes. Generally, the resolution must be confined to a single purpose described in one division of the relevant statutory law (sec. 5705.19). In order to combine purposes to be proposed to the voters as a single ballot measure, there must be a single division in that law authorizing the combination of purposes.

Continuing law grants townships authority to propose such a tax levy for recreational purposes (sec. 5705.19 (H)) as well as for the purpose of acquiring an ownership interest in land, water, or wetlands, or of restoring or maintaining land, water, or wetlands in which the township has an ownership interest, for the purpose of protecting or preserving "greenspace" from modification or encroachment (sec. 5705.19(HH)). Under former law, a tax levy for the purpose of protecting or preserving greenspace was not one for purposes of recreation.

Under former law, each of the above-described tax levies had to be presented individually as a single ballot measure. The act allows a township to submit to the voters a combined tax levy for recreational and greenspace purposes. (Sec. 5705.19(QQ).)

Dissolution of certain township park districts

The act provides that, for a period of 90 days after its effective date, if the park commissioners of a township park district created before 1955 are appointed by the board of township trustees and the township has a population of less than 35,000 and a geographical area of less than 15 square miles, the district may be dissolved by the board of township trustees and its parks converted into township parks. This would occur upon the board of township trustees adopting a resolution. At that time, the district would cease to exist, all real and personal property owned by the district would be transferred to the township, and the township would assume liability for all contracts and debts of the district. All employees of the defunct district would become township employees, but it would

be within the board's discretion whether or not to keep the former park commissioners to operate the defunct district's park lands as township parks. If retained, the board of township trustees would set the terms of employment for the former park commissioners. (Section 4 of the act.)

A township that converts township park district parks into township parks under this provision of the act would continue to collect any taxes levied within the former district. Those taxes must be used for the park purposes for which they were levied. (Section 4 of the act.)

COMMENT

The act removes references to providing a "free" public park from various provisions of continuing law relating to township park districts, including a provision that specifies the ballot language to be used when the voters approve a township park district. That language formerly specifically stated that the voters approve a "free public park." (Sec. 511.22.)

Thus, for those township park districts in existence on the act's effective date, voters have approved a free public park. It is possible then that the act's changes permitting rates, charges, rents, and fees may be considered by Ohio courts as constituting unconstitutional *retroactive laws* if applied to the parks where the voters approved "free public parks" prior to the act's effective date. Section 28 of Article II of the Ohio Constitution. That the act is intended to be applied retroactively in this respect is expressly indicated in section 511.23(G)(1)'s phrase: "regardless of whether the park or parks were acquired before, on, or after the effective date" of the act.

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	08-03-99	p. 1181
Reported, H. Local Government & Townships	03-16-00	pp. 1680-1681
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Reported, S. State & Local Gov't & Veterans Affairs	05-23-00	p. 1777
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Concurrence (95-2)	05-24-00	pp. 2063-2064



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