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*Bill Analysis*  
*Legislative Service Commission*

## **H.B. 417**

123rd General Assembly  
(As Introduced)

**Reps. O'Brien, Winkler, Schuler, Bateman, Callender, Corbin, Hartnett,  
Patton**

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### **BILL 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.
- Instead of requiring that a township park district generally be coterminous with the township, generally requires that 75% of the acreage owned by the district be located in the township, so that the district may extend beyond township boundaries; and permits any park operated by any such district to extend outside the township as well.

- 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 the board of township park commissioners will receive is at least equal to the current market value of the land the township will receive.
- Makes other changes in the Township Park District Law.

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## CONTENT AND OPERATION

### Background

Current law provides for several kinds of parks, including those run by county park districts (sometimes referred to as "metropolitan park districts" or

"Chapter 1545. park districts") and township park districts. These parks are in addition to township and municipal parks, which are operated by the township or municipal corporation that creates the park. A county park district includes all or a part of the territory within a county but cannot divide any township or municipal corporation within the county when the district is created (sec. 1545.01). A township park district, on the other hand, is coterminous with a township's boundaries unless (1) the township has ceased to exist since the establishment of the district or (2) the district owns park land in a municipal corporation located with the township and the township boundaries are later changed (sec. 511.18(B)).

The bill changes what territory can compose a township park district and makes other changes in the Township Park District Law, as described below.

### **Payments for the use of township park district parks**

Under current law, township park districts must have *free public parks*. The bill 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 whether they were acquired before, on, or after the bill's effective date (see **COMMENT**). In addition, the bill 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**

As noted above, current law requires that the boundaries of a township park district be coterminous with the township boundaries (1) unless the township has ceased to exist since the establishment of the park district and (2) except that, when a municipal corporation is located within the boundaries of the township and the district owns park land within the municipal corporation, any change in township boundaries has no effect on the district's boundaries.

The bill requires that instead of generally being coterminous with the township boundaries, at least 75% of the acreage owned by the township park district must be located within the boundaries of the township, unless the township has ceased to exist since the establishment of the district. The bill retains the exception existing under current law for municipal corporations located within the boundaries of the township. If a township park district owns land within such a municipal corporation, changes in township boundaries have no effect on the boundaries of the district. (Secs. 511.18(B) and 511.23(B).)

**Location of a park governed by a township park district**

Under current law, a park governed by a board of township park commissioners must be located within the township unless the district itself contains incorporated territory, in which case the park may be located outside the township as well. Under the bill, a district that does not contain incorporated territory also may locate part of its park outside the township, as long as 75% of the acreage owned by the district is located within the township. (Sec. 511.23(B).)

**Membership of boards of township park commissioners**

Under current 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 bill 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 tax levy to defray the expenses of the district, or for the purchase, appropriation, operation, maintenance, or improvement of lands for district parks, regardless of where the real property owned by the district is located. (Sec. 511.18(A).)

Boards of township park commissioners appointed by a court currently and under the bill must consist of *three members*; boards appointed by a board of township trustees currently and under the bill may consist of *three or five members*. Current law permits a board of township trustees to convert, by resolution, a three-member board of township park commissioners that the *board of township trustees has appointed* to a five-member board. The bill 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).)

Current law requires that a three-member board of township park commissioners consist of three suitable "resident freeholders." Members of five-member boards must meet a similar qualification. The bill 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.<sup>1</sup> (Sec. 511.19(A) and (B).)

Current law provides 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 bill 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 bill.)

### **Lease of land and facilities; credit cards**

Current 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 bill extends this authority to permit a board to *lease* suitable lands as well. The bill also permits a board of township park commissioners to *lease facilities* from other political subdivisions or private sources. (Sec. 511.23(B).)

The bill permits a board of township park commissioners to authorize the use of the district's credit card without any statutory monetary limits. Current law limits 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 current law, the electors decide whether to sell any lands held by a township park district. The election may 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 bill.) The bill removes this method for selling township park district land and creates the procedures described in the next four paragraphs for either leasing, exchanging, or selling that land or other property held by the district.

The bill permits a board of township park commissioners to *lease real or personal property* owned by the district that the board determines is not currently needed for park 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).) The bill also permits the board, without competitive bidding, to *exchange property*

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<sup>1</sup> 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).

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)).

Under the bill, 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 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.)

Under the bill, 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 bill (new sec. 511.25).

Under the bill, 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**

Current 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. Current law requires that any lands so exchanged must be used *for only park purposes*. (Sec. 511.241.)

The bill removes the requirement that lands so exchanged be used for only park purposes. Additionally, the bill 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 the board of township park commissioners will receive is at least equal to the current market value of the land that the board of township trustees will receive. (Sec. 511.241.)

### Issuance of revenue securities

The bill 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 bill 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 revenue 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 current 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. The bill permits a board to also adopt bylaws and rules establishing penalties, including fines, for violating the bylaws and rules. It specifies that those fines, when 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).)

### **Superintendent of parks**

Current law permits a board of township park commissioners to appoint a superintendent for the township park district parks. The bill 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 current 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 current law, before a board of township park commissioners may 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 are appointed by the board of township trustees, must approve the terms of the donation or trust. The bill removes this requirement. (Sec. 511.23(C).)

The bill also permits a board of township trustees to contribute moneys, *lands* (added by the bill), 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 current 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 current law, for purposes of park planning, acquisition, management, and improvement. (Sec. 511.37.)

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## COMMENT

The bill removes references to providing a "free" public park from various provisions of 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 specifically states the voters approve a "free public park." (Sec. 511.22.)

Thus, for those township park districts currently in existence, voters have approved a free public park. It is possible then that the bill'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 bill's effective date. Section 28 of Article II of the Ohio Constitution. That the bill is intended to be applied retroactively in this respect is expressly indicated in proposed 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 bill.

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## HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced H0417-I.123/rss	08-03-99	p. 1181