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124th General Assembly

(As Reported by S. State & Local Government & Veterans Affairs)

Reps. Seitz, Schmidt, Raga, Brinkman, Hagan, Faber, Collier, Carano, Seaver, Schaffer, Lendrum, Fessler, Grendell, Blasdel, Schneider, Roman, Sferra, Hughes, Setzer, Distel, Flowers, Wolpert, Niehaus, Calvert, Webster, Allen, Otterman, Gilb, Manning, Olman, Clancy, Damschroder, Latta, Womer Benjamin, Sulzer, Reidelbach, Kearns, Willamowski, Latell, Cates

BILL SUMMARY

- Authorizes taxing authorities to create multiple reserve balance accounts for rainy day funds.
- Increases from five to ten years the length of time during which moneys may accumulate in a political subdivision's capital projects fund.
- Permits a political subdivision to have a voter-approved property tax levy for "parks and recreational purposes."
- Authorizes township fire districts to issue bonds for specific district purposes.
- Repeals the classified civil service residency requirement.
- Permits a board of township trustees to exercise certain emergency powers for up to six months.
- Permits a board of township trustees to contract with a developer for the developer to pay service charges for emergency snow and ice removal on private roads, in lieu of their payment by the relevant property owners.

* *This analysis was prepared before the report of the Senate State and Local Government and Veterans Affairs Committee appeared in the Senate Journal. Note that the list of co-sponsors and the legislative history may be incomplete.*

- Expands the authority of townships pertaining to the permanent endowment fund for their cemeteries and repeals certain provisions pertaining to that fund.
- Authorizes townships to sell real property under certain circumstances without a public auction or competitive bidding.
- Authorizes a township to declare a township road obstruction to be a nuisance and to order its removal.
- Permits authorized township officers and employees to incur obligations of up to \$2,500 without prior approval.
- Permits townships and counties to order the county engineer to construct curbs (including driveway aprons) and gutters along or connecting public highways.
- Permits townships to require permits for the installation of driveway culverts.
- Permits notice by posting and photograph before the taking of certain township nuisance abatement actions.

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CONTENT AND OPERATION

Reserve balance accounts and capital projects funds

Currently, political subdivisions may create not more than one reserve balance account for each of the following purposes: (1) budget stabilization, (2) self-insurance programs, and (3) workers' compensation payments.¹ A budget stabilization reserve balance account must be established in the general fund of the political subdivision, and the money reserved in the account in any fiscal year cannot exceed 5% of the revenue in that fund in the preceding fiscal year. (Sec. 5705.13(A).)

The bill permits a political subdivision to have more than one reserve balance account for budget stabilization and to establish those accounts in either the general fund or in one or more special funds for operating purposes of the subdivision. The amount of money reserved in *each* account in any fiscal year cannot exceed 5% of the revenue credited in the preceding fiscal year to the fund in which the account is established. (Sec. 5705.13(A).)

Current law also provides that a political subdivision's taxing authority cannot accumulate money in a capital projects fund for more than five years after the fund is created. If, after that period, the subdivision has not contracted for the acquisition, construction, or improvement of fixed assets for which money was accumulated in that fund, all fund moneys must be transferred to the funds from which the money originated or for which it was originally intended. The bill increases the time period for which moneys may stay in a capital projects fund from five years to ten years. (Sec. 5705.13(C).)

Property tax levy for parks and recreational purposes

The Tax Levy Law currently permits political subdivisions to place before the voters a property tax levy "for recreational purposes." The bill expands that

¹ *The political subdivisions with this authority are counties, townships, municipal corporations, township police districts, township fire districts, joint fire districts, joint ambulance districts, joint emergency medical services districts, fire and ambulance districts, joint recreation districts, township waste disposal districts, township road districts, community college districts, technical college districts, detention facility districts, single-county and joint-county juvenile facilities districts, combined juvenile facilities and detention facility districts, joint-county alcohol, drug addiction, and mental health service districts, drainage improvement districts, union cemetery districts, county school financing districts, and city, local, exempted village, cooperative education, and joint vocational school districts (sec. 5705.01(A)-not in the bill).*

provision to allow the vote to be on a levy for "parks and recreational purposes" and permits the levy to be for a specified number of years or a continuing period of time. In addition, the bill clarifies that township tax levies for constructing or repairing roads and bridges can be either for a specified number of years or a continuing period of time. (Sec. 5705.19.)

Township fire district bonds

Current law permits a board of township trustees to create a fire district out of any portion or portions of the township as it considers necessary for fire protection. Each township fire district is a political subdivision separate from the township as a whole, but is governed by the board of township trustees.² Additional territory can be added to a township fire district, including a municipal corporation that is within or adjoining the township, and such a district may impose a property tax within the district.

The bill permits a township fire district to issue bonds under the Uniform Public Securities Law for acquiring fire-fighting equipment, buildings, and sites for the district or for constructing or improving buildings to house firefighting equipment. (Secs. 133.01(L)(9), (MM)(16), and (NN)(7) and 505.401.)

Removal of Civil Service Law residency requirement

The Civil Service Law currently requires any person appointed to a position in the classified civil service, other than temporary and "exceptional" appointments, to be or immediately become a resident of Ohio. The bill eliminates this residency requirement. It also eliminates the Director of Administrative Services' authority to set "residence" limitations for taking classified civil service examinations. (Secs. 124.23(B) and 124.27(C).)

Emergency snow and ice removal

Current law permits a board of township trustees to exercise certain extraordinary powers when there is an emergency that threatens life or property within the unincorporated territory of the township or when such an emergency is *imminent*. These powers can be exercised "during the emergency in the one-month period following" the board's adoption of its resolution declaring the emergency or imminent emergency. These powers include the removal of obstructions, such as snow, ice, and debris, from undedicated roads (nonpublic roads) or stream banks, and charging the costs of this removal service to property

² *The bill refers to "the board of trustees of a fire district organized under division (C) of section 505.37 of the Revised Code"; this appears to be, in fact, the board of township trustees.*

owners. The trustees, however, must first give (or attempt in good faith to give) the owners oral notice of their intent to clear a road or bank and impose a service charge. These charges must be allocated among the relevant property owners on an equitable basis. In addition, the trustees also may contract, without competitive bidding, to immediately acquire or repair equipment needed for the emergency. (Sec. 505.82(A).)

The bill makes several changes to these emergency provisions. First, it extends the time period for which the board of township trustees may exercise its extraordinary emergency powers from one month following the adoption of its resolution, to a period designated in that resolution of not more than six months. Second, when the declared emergency involves the removal of snow or ice from undedicated roads, instead of collecting service charges from the relevant property owners, the bill permits the board of township trustees to contract with a developer whereby the developer agrees to pay the service charges for the snow or ice removal. (Sec. 505.82(A) and (B).)

Township permanent cemetery endowment fund

A township may provide for a township cemetery and levy a property tax for it. The township must sell burial lots at a "reasonable price," and the proceeds of these sales must be used in improving and embellishing the cemetery grounds or for the purchase of additional cemetery land. In addition, the board of township trustees currently may receive property in trust, by gift, bequest, devise, or otherwise, as a permanent fund to be held and invested in interest-bearing securities by the board, the income from which is to be used in the care, improvement, and beautifying of a designated burial lot after the payment of the costs and expenses connected with the trust. Gifts, devises, or bequests to a permanent fund and the income from them are exempt for state taxation. The township clerk must keep specified records with respect to investments of a permanent fund and maintain custody of and account for the trust property. The township's clerk and trustees are entitled to receive compensation for their permanent fund-related services. (Secs. 517.01, 517.03, 517.07, and 517.08--not in the bill; sec. 517.15--amended by the bill; and secs. 517.16, 517.17, and 517.18--repealed by the bill.)

The bill expands the potential financial sources of a township's "permanent cemetery endowment fund," and expands a township's power to maintain its cemeteries, by permitting a township to (1) add charges to the price regularly charged for burial lots for the purpose of maintaining, improving, or beautifying its cemeteries, (2) make agreements with a purchaser of a burial lot for part of the purchase price to be applied to the maintenance, improvement, or beautification of the lot, and (3) make contributions of money from the township general fund to this endowment fund. These financial sources become part of the endowment

fund, along with any gifts, devises, or bequests for the maintenance, improvement, or beautification of the cemetery generally or of a designated burial lot. The bill also repeals current law's provisions specific to the endowment fund regarding actions of the clerk and board of township trustees, associated investment records, the tax-exempt status of the income from investment of fund moneys, and the entitlement of the clerk and trustees to compensation for their fund-related services. The fund, therefore, would be treated under Revised Code principles generally applicable to all township funds, not just to this specific fund. (Sec. 517.15; outright repeal of secs. 517.16, 517.17, and 517.18.)

Disposition of township real property

Currently, a board of township trustees may sell or otherwise transfer real property that is not needed for public use in certain manners, including (1) a sale by public auction after specified notice and (2) a sale or other transfer to a political subdivision or, for certain purposes, a nonprofit senior citizens' organization upon terms agreed to by the parties (sec. 505.10(A)(1) and (5); sec. 505.102--not in the bill). The bill also allows a township to sell or otherwise transfer real property to *any person* upon whatever terms are agreed to between the parties, but only pursuant to a resolution of, and if there is a unanimous vote of, the board of township trustees (sec. 505.10(A)(6)).

Removal of objects on highways in townships

A portion of the bill deals with the removal of vegetation and objects from highways. Current law provides the following authority for removing vegetation and objects:

- A township has authority to remove vegetation, garbage, refuse, and other debris from land in the township if the board of township trustees determines that the owner's maintenance of those things constitutes a nuisance. The township must first notify the owner and order the owner to remove the nuisance. If it is not removed within seven days of the notification, the township can remove the nuisance and charge the expenses to the owner. (Sec. 505.87.) (See "**Notice for certain nuisance actions**," below.) Further, a board of township trustees has authority to trim or remove any vegetation growing in or encroaching *onto the right-of-way* of *township* roads (the county engineer has the same authority for county roads) at public expense and "is not required to compensate the abutting landowner for trimming or removing such . . . vegetation . . ." (sec. 5543.14--not in the bill).

- A board of county commissioners can require the removal of objects or structures *that occupy any part of a highway* other than a state highway, that do not relate to a legally granted franchise, and that the board determines obstruct the highway or may interfere with its proposed improvement or use by the traveling public. Examples include utility lines, poles, and pipes; persons or businesses responsible for these objects or structures can request and receive approval to relocate them within the bounds of the highway. (Sec. 5547.03--not in the bill.)
- If a fence *bounds a public highway and is located on land that is part of the highway*, and if the fence in any way interferes with the grading, draining, or dragging of the highway, causes the drifting of snow on the highway, or in any other way obstructs or endangers travel on the highway, a board of township trustees can declare the fence to be a public nuisance and order the owner or occupant of the land to remove it within 30 days. If that person refuses or neglects to comply, the board must remove the fence and charge the expense to the owner to be collected in the same manner as other taxes. (Sec. 5571.14.)

The bill generally permits a board of township trustees *or a township highway superintendent* (a person appointed by the board to maintain and repair township roads (sec. 5571.02--not in the bill)) to remove any object bounding a township road and *located wholly or partly on the land belonging to the road*, not just fences, using the above described procedure. The removal authority applies to land owned in fee simple or by easement. It does not apply, however, to an object that is lawfully entitled to be maintained on land belonging to a township road pursuant to a franchise or other grant of public authority. The bill defines an "object" to include a fence, post, pole, athletic or recreational apparatus, rock, or berm, any vegetation, or any other object the board or superintendent identifies as interfering with or obstructing a township road. (Sec. 5571.14.)

Obligations of the township

Current law permits a board of township trustees to pass a resolution authorizing township officers and employees to incur obligations of no more than \$750, which subsequently must be approved by a formal resolution of the board. Before money can be paid out for these obligations, an order must be signed by at least two trustees and countersigned by the township clerk. The bill raises the dollar limitation, permitting authorized township officers and employees to incur obligations of no more than \$2,500. Additionally, the bill permits a board of township trustees to authorize, by resolution, a township administrator to authorize officers and employees to incur these larger obligations. (Sec. 507.11.)

Curbs and gutters

Under current law, a board of county commissioners, when petitioned by property owners, has authority to improve roads by constructing curbs and gutters and to assess the costs to those landowners (secs. 5559.02 to 5559.16--not in the bill). Townships do not have comparable authority.

The bill requires the county engineer, upon the order of either the board of county commissioners or the board of township trustees, to construct curbs or gutters along or connecting public highways in the unincorporated area of a township. This construction can be petitioned for by a majority of owners of abutting property, or occur upon the unanimous vote of the board of county commissioners or board of township trustees. The costs of the improvements may be charged entirely to the abutting property owners, entirely to the acting county or township, or to both the abutting property owners and the county or township, as determined by the applicable board. The bill provides that, as part of a curb improvement, the board of county commissioners or board of township trustees may include the construction or repair of a driveway apron. (Sec. 5543.10.)

Driveway culvert permits in townships

Current law permits a board of township trustees to require any person making an excavation in a public highway or highway right-of-way within its jurisdiction (other than certain utility repairs) to obtain a permit that may be conditioned upon (1) the submission of plans, (2) specification of methods of excavation and resurfacing, (3) use of warning devices to protect highway travelers, (4) indemnification of the township against liability or damage resulting from the excavation, and (5) posting a deposit or bond. There is an application fee of \$50 that will be returned if an application is denied. (Sec. 5571.16.)

Although installation of a driveway culvert involves an excavation, the Attorney General has opined that such culverts, installed as part of an abutting property owner's driveway, are not part of a township's system of roads and that the board of township trustees, thus, has no duties with respect to those culverts and cannot issue permits for them.³ The bill authorizes a board of township trustees to require any person seeking to install a driveway culvert in a township highway or highway right-of-way to obtain a permit in the same manner as currently provided for other highway excavations. (Sec. 5571.16.)

³ 2002 Op. Att'y Gen. 2002-009. The opinion addresses only townships that have not adopted a limited home rule government. It is not clear whether a township with such a government could issue driveway culvert permits.

Notice for certain nuisance actions

Under current law, a board of township trustees may provide for the abatement, control, or removal of vegetation, garbage, refuse, and other debris if the board determines a landowner's maintenance of the debris constitutes a nuisance. The board must give a specified notice to the landowner and any holders of liens of record at least seven days before providing for the abatement, control, or removal. The board must send the notice to the landowner by certified mail if the owner is a resident of the township or is a nonresident whose address is known, and to the lien holders of record by certified mail. If the landowner's address is unknown and cannot reasonably be obtained, it is sufficient to publish the notice in a newspaper of general circulation in the township. (Sec. 505.87.)

Despite continuing the mandatory requirement for certified mail notice, the bill provides an alternative method for notifying a landowner who is a resident of the township or who is a nonresident whose address is *known*. The board of township trustees may give the notice to the landowner by causing any of its agents or employees to post the notice on the principal structure on the land and to photograph that posted notice with a camera capable of recording the date of the photograph on it. (Sec. 505.87(B).)

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	02-19-02	p. 1414
Reported, H. Local Gov't & Townships	11-14-02	p. 2059
Passed House (88-3)	11-20-02	pp. 2073-2076
Reported, S. State & Local Gov't & Veterans Affairs	---	---

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