



Sub. H.B. 318

127th General Assembly
(As Passed by the General Assembly)

- Reps.** Gibbs, Aslanides, Domenick, Bacon, Batchelder, Bolon, Chandler, Combs, Daniels, DeBose, Dyer, Evans, Flowers, Garrison, Goyal, J. Hagan, R. Hagan, Harwood, Hughes, Luckie, J. McGregor, Patton, Sayre, Schindel, Schneider, Setzer, Uecker, Zehringer
- Sens.** Amstutz, Buehrer, Harris, Lehner, Padgett, Patton, Sawyer, Schaffer, Wagoner, Wilson, R. Miller, D. Miller

Effective date: *

ACT SUMMARY

- Requires a board of county commissioners or board of township trustees, prior to adopting a resolution that places a road on nonmaintained status, to hold at least two public hearings to allow for public comment on the proposed resolution and to request the county engineer to issue an advisory opinion regarding the consequences of placing the road on nonmaintained status, including any impact such action would have on adjoining property owners.
- Provides that a graveled or unimproved road cannot be placed on nonmaintained status if the road is the exclusive means for obtaining access to land that adjoins that road and the road is passable year-round.
- Requires a board of county commissioners or township trustees to terminate the nonmaintained status of a road if (1) certain landowners upgrade a nonmaintained road or (2) for roads placed on nonmaintained status prior to the effective date of the act, certain landowners petition for termination of the nonmaintained status and the applicable board finds

* The Legislative Service Commission had not received formal notification of the effective date at the time this analysis was prepared. Additionally, the analysis may not reflect action taken by the Governor.

that the road provides the exclusive means for obtaining access to the land.

- Exempts proceedings to vacate a road from the requirement that a board of county commissioners must act in accordance with real property appropriation procedures at its final hearing on a public road improvement.
- Provides that for purposes of calculating the distribution to townships of the revenue generated by one component of the state motor vehicle fuel tax, the number of lane miles within the boundaries of a township does not include any lane miles of township roads that have been placed on nonmaintained status.

CONTENT AND OPERATION

Nonmaintained status of a county or township road

Prior law

Prior law gave identical authority to boards of county commissioners and boards of township trustees relative to the placement of certain roads on nonmaintained status. Generally, a board of county commissioners by resolution could place a graveled or unimproved county road under its jurisdiction or any portion of such a road on nonmaintained status; a board of township trustees could take the same action regarding a graveled or unimproved township road under its jurisdiction. Upon adoption of such a resolution, the board of county commissioners or board of township trustees ("board") was not required to cause the road to be dragged at any time, or to cut, destroy, or remove any brush, weeds, briars, bushes, or thistles upon or along the road, or to remove snow from the road, or to maintain or repair the road in any manner. The board, in its discretion, could cause any of these actions to be performed on or to a road that it placed on nonmaintained status. (R.C. 5541.05(A) and 5571.20(A).)

A board could adopt such a resolution only if the board found that placing the road on nonmaintained status would not unduly adversely affect the flow of motor vehicle traffic on that road or on any other road located in the immediate vicinity of that road as determined by the overall use of the road during the preceding 21 years (R.C. 5541.05(B) and 5571.20(B)). A board could terminate the nonmaintained status of a county or township road, as appropriate, by adopting a resolution to that effect. If the owner of land adjoining a road placed on nonmaintained status requested the board to terminate the nonmaintained status of the road, the board, in its resolution that terminates that nonmaintained status,

could require the owner to pay the costs of upgrading the road to locally adopted county standards (R.C. 5541.05(C) and 5571.20(C)).

A graveled county or township road could not be placed on nonmaintained status if any person resided in a residence adjacent to the road, the road was the exclusive means for obtaining access to the residence, and the residence was the person's primary place of residence (R.C. 5541.05(D) and 5571.20(D)).

Changes made by the act

Under the act, a board still has the authority to place a graveled or unimproved county or township road under its jurisdiction or any portion of such a road on nonmaintained status, but the act provides that the road at issue must be one that is not passable year-round. Under the act, a road is passable year-round if a four-wheeled, two-wheel drive passenger motor vehicle can be driven on the road year-round, apart from seasonal conditions caused by weather-related events. (R.C. 5541.05(A) and (E) and 5571.20(A) and (E).)

Prior to adopting a resolution that places a road on nonmaintained status, the board, at special or regular meetings, is required to hold at least two public hearings to allow for public comment on the proposed resolution. The board must publicize the times and places of the hearings by causing a notice to be published in a newspaper of general circulation in the county in which the road is located at least ten days prior to the date of the first meeting. (R.C. 5541.05(A) and 5571.20(A).)

In addition, the act provides that prior to adopting a resolution that places a road on nonmaintained status, the board must request the county engineer to issue an advisory opinion regarding the consequences of doing so, including any impact such action would have on adjoining property owners. A board may adopt such a resolution only after the county engineer issues the advisory opinion and the county engineer, in the county engineer's advisory opinion, finds that placing the road on nonmaintained status will not unduly adversely affect the flow of motor vehicle traffic on that road or on any adjacent road. (R.C. 5541.05(B) and 5571.20(B).)

Under the act, a graveled or unimproved road may not be placed on nonmaintained status if the road is both the exclusive means for obtaining access to land that adjoins that road and the road is passable year-round (R.C. 5541.05(D) and 5571.20(D)).

The act establishes two new methods by which the nonmaintained status of a road may be terminated. First, the board of county commissioners or township trustees must terminate the nonmaintained status of a road if the owner of land

adjoining a nonmaintained road upgrades the road to the standards for that road as most recently certified by the county engineer; upon termination of the nonmaintained status, the board then must maintain and repair the road according to the standards of the county engineer. However, this procedure does not apply to a road that, prior to being placed on nonmaintained status, was not certified by the applicable board to the Director of Transportation for purposes of the Auto Registration Distribution Fund as mileage used by and maintained for the public (sometimes known as "paper" roads). (R.C. 5541.05(C)(2) and 5571.20(C)(2).) Second, in regard to a road that was placed on nonmaintained status under prior law and that provides exclusive means to access land, the act allows the owner of land adjoining such a road or the owner of land whose only access to such a road is by easement to petition the board for review of the nonmaintained status of the road. The board must review the status of the road and must terminate the nonmaintained status if it finds that the road provides the exclusive means for obtaining access to the land. Based on its review of whether the road provides exclusive access to the property, the board must adopt a resolution either retaining or terminating the nonmaintained status of the road. If the board terminates the nonmaintained status of the road, the board is prohibited from requiring the owner to pay the costs of upgrading, maintaining, or repairing the road. (R.C. 5541.05(C)(3) and 5571.20(C)(3).)

County road improvement proceedings

Law largely retained by the act establishes procedures for a board of county commissioners to follow when making improvements to a public road, including location, establishment, alteration, widening, straightening, vacation, or change in the direction of the public road. These procedures include a review of the improvement by the county commissioners and a final hearing, the dates of which must be published. At the final hearing, if the board orders an improvement established, law generally retained requires the board to proceed in accordance with the general procedures established for the appropriation of real property, including steps such as notice of intent to acquire, purchase offer, and determination of ownership rights by a jury. The act exempts the vacation of a road from the requirement for a board of county commissioners to establish public road improvements using real property appropriations proceedings. (R.C. 5553.11.)

Lane miles of nonmaintained township roads not included in calculating the distribution of a portion of the motor vehicle fuel tax

The state motor vehicle fuel tax is levied on the use, distribution, and sale in this state of fuel used by motor vehicles. Imposed on dealers, the tax is comprised of two levies of 2¢ per gallon, one levy of 8¢ per gallon, one levy of 1¢ per gallon, and one levy of 15¢ per gallon, for a total of 28¢ per gallon. The state

retains a large percentage of the revenue and local governments--municipal corporations, counties, and townships--receive varying percentages of the revenue.

For the levy of 8¢ per gallon, 20% is distributed to townships. Each township receives the greater of either the equal share of the total amount allocated to all townships or a proportionate share based on that township's lane miles of township roads and the township's proportion of motor vehicle registrations.¹ The act replaces "lane" miles with "centerline" miles and provides that for the calculation, the number of centerline miles within the boundaries of a township does not include any centerline miles of township roads that have been placed on nonmaintained status by a board of township trustees. (R.C. 5735.27(A)(5)(b).)

HISTORY

ACTION	DATE
Introduced	09-20-07
Reported, H. Infrastructure, Homeland Security and Veterans Affairs	04-17-08
Passed House (94-0)	04-29-08
Reported, S. Highways & Transportation	12-09-08
Passed Senate (31-0)	12-10-08
House concurred in Senate amendments (98-0)	12-16-08

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¹ Source: Ohio Department of Taxation 2006 Annual Report.