



Sub. H.B. 470*

127th General Assembly

(As Reported by H. Local and Municipal Government and Urban Revitalization)

Reps. Setzer, Strahorn, Collier, Combs, Evans, Harwood

BILL SUMMARY

- Upon a determination that vegetation located on private property blocks or otherwise interferes with the sight lines of motorists traveling on county or township roads, permits a county engineer or a board of township trustees to send a notice requiring its removal to the property owner.
- Authorizes an engineer or board to enter upon private land in order to remove vegetation that blocks or otherwise interferes with the sight lines of motorists traveling on county or township roads.
- Permits an engineer or a board to make a written report to the county auditor of the engineer's or board's action relating to the removal of the vegetation in order for the expenses to be entered on the tax duplicate.
- Requires the engineer or board to make restitution for certain property damage resulting from the removal of vegetation on private property.
- Requires a county engineer or board of township trustees to send a written notice to the abutting landowner of the engineer's or board's intention related to trimming or removal of vegetation encroaching on the right-of-way of a county or township road.
- Authorizes a board of township trustees to require that a ditch or culvert located on property in the township be cleaned out by the property owner

* This analysis was prepared before the report of the House Local and Municipal Government and Urban Revitalization Committee appeared in the House Journal. Note that the list of co-sponsors and the legislative history may be incomplete.

if the ditch or culvert has become partially or totally obstructed and may cause flooding of public property.

CONTENT AND OPERATION

Background: removal of vegetation

In general, counties and townships have a duty to maintain their roads.¹ Specifically, current law states, "the board of township trustees shall have control of the township roads of its township and . . . shall keep them in good repair."² Similarly, for counties the county engineer is charged with the construction, reconstruction, improvement, maintenance, and repair of all county roads.³ Current law allows the removal of vegetation that either is growing on the public right-of-way or encroaching on it. For example, a county engineer or a board of township trustees may trim or remove vegetation growing in or encroaching onto the right-of-way of county or township roads as is necessary.⁴ Also, a board of county commissioners or a board of township trustees must destroy all brush, briars, burrs, vines, and noxious weeds growing within the limits of a township road.⁵ These provisions do not allow counties or townships to enter onto private property and remove vegetation that is located wholly on that private property, even if the vegetation hinders the sight lines of motorists traveling on county or township roads.

Removal of vegetation wholly on private property

(R.C. 5543.15 and 5571.18)

Required notice

If a county engineer or a board of township trustees determines, based upon evidence of the county engineer, that, at a particular location, vegetation located on land that is located on a county or township road constitutes a clear and present danger to the safety of the traveling public (which may include pedestrians) because the vegetation blocks or otherwise interferes with the sight lines of

¹ R.C. 5535.08, not in the bill.

² R.C. 5571.02, not in the bill.

³ R.C. 5543.01, not in the bill.

⁴ R.C. 5543.14.

⁵ R.C. 5579.04, not in the bill.

motorists traveling on that road, the engineer or board must send a written notice by certified mail informing the land owner of that fact and also particularly describing the vegetation at issue. The notice must direct the owner to remove that vegetation within 15 days after the date of the notice. The notice further must inform the owner that if the owner does not remove the vegetation within that period, the engineer or board will remove the vegetation and, if the engineer or board makes a report to the county auditor, the removal will be at the owner's expense.

Entering the property

If an engineer or a board of township trustees issues such a notice and the owner does not remove the described vegetation in a timely manner, the engineer or board must issue an order directing the engineer or board or their employees or designees to enter upon the land and remove the vegetation. The engineer or board must give notice of the proposed entry to the owner and to the person possessing the land, if that person is not the owner, by reasonably available means not less than three, but not more than seven, days before the entry date. The engineer or board or their employees or designees must enter the land and remove the vegetation and nothing more. Such an entry does not constitute a trespass.

Report of engineer's or board's action

The bill permits the engineer or board to make a written report to the county auditor of the engineer's or board's action related to the removal of the vegetation. The engineer or board must include in any such report a proper description of the premises and a statement of all expenses the county or township incurred in having the vegetation removed, including any costs incurred in providing the required notice and the amount the county or township paid for labor, materials, fuel, and equipment.

Expenses to be recovered

If the engineer or board makes the report, the expenses incurred must be entered upon the tax duplicate and become a lien upon the land from the date of the entry. The expenses must be collected as taxes are collected, and any amount collected must be returned to the county or township and placed in the appropriate general fund.

Restitution for damages

The engineer or board must make restitution or reimbursement for any actual damage done to the land or to improvements or personal property located on the land by the engineer or board or their employees or designees that is not

incidental to the removal of the vegetation. For townships, if the township and owner of the land are unable to agree upon restitution or other settlement, damages are recoverable by civil action, except that the value of the vegetation removed is not recoverable.⁶

Immunity

A county, county engineer, township, or board of township trustees, and any employee or designee of those entities are not liable in damages in a civil action for any injury, death, or loss to person or property that allegedly arises under the provisions of the bill related to the removal of vegetation on private property.

Notice for trimming or removal of vegetation encroaching on right-of-way

(R.C. 5543.14)

Under existing law, a county engineer and a board of township trustees can trim or remove any and all trees, shrubs, and other vegetation growing in or encroaching onto the right-of-way of county or township roads as is necessary in the engineer's or board's judgment to facilitate the right of the public to improvement and maintenance of, and uninterrupted travel on, those roads. The engineer or board is not required to compensate the abutting landowner for trimming or removing the trees, shrubs, and other vegetation.

Under the bill, except in the case of an emergency, at least seven days before trimming or removing any trees, shrubs, and other vegetation, the engineer or board must send a written notice by certified mail generally describing the trees, shrubs, and other vegetation to be trimmed or removed to the abutting landowner of the engineer's or board's intention to trim or remove the trees, shrubs, or other vegetation. The notice must state that the engineer or board is not required to compensate the abutting landowner for the trimming or removal.

Removal of obstructions in ditches or culverts in townships

(R.C. 503.35)

The bill permits a board of township trustees to require that a ditch or culvert located on property in the township be cleaned out if the ditch or culvert has become partially or totally obstructed and, because of the obstruction, flooding of a road or other public property may result.

⁶ This provision regarding the inability to agree on restitution does not apply to counties.

Except in the event of an emergency, the board must provide written notice that action to remove an obstruction is necessary to the owner of the property on which such a ditch or culvert is located specifying a reasonable time period of not less than 15 days after the date of the notice within which the property owner must remove or provide for the removal of the obstruction. The notice also must inform the property owner that if the owner does not remove or provide for the removal of the obstruction within the specified time period, the board will provide for the removal of the obstruction and the owner will be liable for all costs of the removal.

If a property owner who has received a notice fails to remove or provide for the removal of an obstruction, the board of township trustees must provide additional notice in writing to the owner that the board intends to take action to remove the obstruction. Not less than three days after the issuance of that notice, the board must provide for the removal of the obstruction. The board can employ the necessary labor, materials, and equipment to perform the task. All expenses incurred, when approved by the board, must be paid out of the township general fund from moneys not otherwise appropriated. The bill specifies that the entrance on a person's property to remove an obstruction does not constitute a trespass.

A board must make a written report to the county auditor of the board's actions. The board must include in the report a proper description of the property and a statement of all expenses incurred in providing for the removal of any obstruction, including the board's charges for its services, the costs incurred in providing notice, any fees or interest paid to borrow moneys, and the amount paid for labor, materials, and equipment. The incurred expenses must be entered on the tax duplicate, are a lien on the land from the date of the entry, must be collected as other taxes, and must be returned to the township and placed in the township general fund.

HISTORY

ACTION	DATE
Introduced	02-06-08
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