

Fiscal Note & Local Impact Statement

127th General Assembly of Ohio

Ohio Legislative Service Commission
77 South High Street, 9th Floor, Columbus, OH 43215-6136 ✧ Phone: (614) 466-3615

✧ Internet Web Site: <http://www.lsc.state.oh.us/>

BILL: **Sub. H.B. 318** DATE: **December 16, 2008**
STATUS: **As Enacted – Effective April 7, 2009** SPONSOR: **Rep. Gibbs**
LOCAL IMPACT STATEMENT REQUIRED: **Yes**
CONTENTS: **Makes changes to provisions that govern how county and township roads are placed on nonmaintained status**

State Fiscal Highlights

- No direct fiscal effect on the state.

Local Fiscal Highlights

LOCAL GOVERNMENT	FY 2009 – FUTURE YEARS
Counties	
Revenues	- 0 -
Expenditures	Potential increase for road maintenance and repair and advisory opinions
Townships	
Revenues	- 0 -
Expenditures	Potential increase for road maintenance and repair

Note: For most local governments, the fiscal year is the calendar year. The school district fiscal year is July 1 through June 30.

- **Road maintenance costs.** By limiting the types of roads that can be placed on nonmaintained status, the bill would increase county and township costs to maintain roads that revert to maintained status or otherwise would have been placed on nonmaintained status. The extent of these added costs would depend on the extent of maintenance or repairs needed to adequately maintain each applicable road.
- **County engineer advisory opinions.** The bill requires that a county or township seek an advisory opinion from the county engineer before moving to place a road on nonmaintained status. According to the Ohio County Engineers Association, the cost for such an opinion could vary widely. An opinion could be relatively inexpensive to produce, but could cost several thousands of dollars if an engineering study is needed.
- **Public notification and hearings on status of roads.** The bill requires that a county or township have at least two public hearings and publish a notice of these hearings in a general circulation newspaper within the county before the first hearing on a motion to place a road on nonmaintained status. These public notification costs would be minimal.

Detailed Fiscal Analysis

Overview

The bill revises provisions governing the placement of county and township roads on nonmaintained status. Under current law, a board of county commissioners or a board of township trustees, by resolution, may place a graveled or unimproved road under its respective jurisdiction on nonmaintained status. Such roads are not required to be maintained or repaired. While it is unknown how many counties or townships have placed roads on nonmaintained status, Ohio Department of Transportation (ODOT) data indicate that total statewide centerline mileage of roads that are either not open to the public or impassable, nonmaintained, or vacated was 1,648.98 (49.2 centerline miles were under county jurisdiction and 1,599.78 centerline miles were under township jurisdiction) at the end of CY 2007.

County or township road maintenance costs

The bill specifies that a graveled or unimproved road may not be placed on nonmaintained status if the road is the exclusive means for obtaining access to land that adjoins that road and 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. This contrasts with current law that prevents a graveled road from being placed on nonmaintained status if (1) any person resides in a residence adjacent to the road, (2) the road is the exclusive means for obtaining access to the residence, and (3) the residence is the person's primary place of residence.

The bill permits the owner of land, irrespective of whether there is a residence on the land, adjoining a road placed on nonmaintained status *before this bill takes effect* or the owner of land whose only access to such a road is by easement, to petition the county or township to review the nonmaintained status of the road to determine if the road provides the only means of access to the land. If the county or township terminates the nonmaintained status of a road, the county or township would incur the costs of upgrading, maintaining, or repairing the road.

The bill also provides that if the owner of land adjoining a road that has been placed on nonmaintained status upgrades the road to applicable standards, a county or township must terminate the nonmaintained status of the road and resume maintaining and repairing the road unless the road, before it was placed on nonmaintained status, was not certified by the county or township to ODOT as mileage for the purposes of establishing the local distribution of motor vehicle registration revenues.

These provisions would significantly limit the roads on nonmaintained status to those referred to as "paper" or "X" roads, which are roads that are created on a plat but never opened, or are not open to the public. As a result, counties and townships would likely incur additional costs to maintain roads that return to maintained status or are improved by the adjoining land owners. The increase in county and township costs would depend on the extent of maintenance or repairs needed to adequately maintain each applicable road, but could easily be more than minimal.

Nonmaintained status notification and hearings process

This bill requires that at least two public hearings be held to allow for public comment before a county or township adopts a resolution putting a graveled or unimproved road that is not passable year-round on nonmaintained status. The bill requires that these hearings be publicized in a newspaper of general circulation and on the county or township web sites at least ten days prior to the first hearing. There would be a small cost attached to this requirement.

The bill also changes the process by which roads are considered for placement on nonmaintained status. Currently, county commissioners or township trustees must find that placing a road on nonmaintained status will not unduly adversely affect the flow of traffic in the immediate vicinity based on the road's usage over the preceding 21 years. Instead, the bill requires that county commissioners or township trustees obtain an advisory opinion from the county engineer evaluating these factors. According to the Ohio County Engineers Association, the cost for such an opinion could vary widely. On the one hand, an opinion could be inexpensive. On the other hand, if an engineering study is needed, the costs could be in the thousands of dollars.

Township Gasoline Excise Tax Fund receipts – township lane miles

The motor vehicle fuel tax is composed of five separate levies currently totaling 28 cents per gallon. The Gasoline Excise Tax Fund (Fund 7060) receives a portion of the proceeds of the motor vehicle fuel tax. Fund 7060 is then distributed to counties, municipalities, and townships for the construction and maintenance of roads and highways and other related purposes. A provision in the bill requires that the number of township centerline miles certified by ODOT for purposes of receiving revenue from Fund 7060 must not include those centerline miles placed on nonmaintained status by the township.

On an annual basis, each county and township is required to certify to ODOT the actual number of miles under its statutory jurisdiction that are used by and maintained for the public. ODOT maintains an inventory database of county and township roads, within which changes in the number of certified miles are recorded. Historically, roads that were not open to the public or were not passable carried a designation code of "Class X" in ODOT's inventory files.

Roads with the Class X designation are not certified as public road mileage and thus are not counted in the calculations establishing the distribution of motor vehicle registration and gasoline excise tax revenue. ODOT assigns roads placed on nonmaintained status under Class X but does not distinguish nonmaintained roads from other Class X roads. Because nonmaintained township roads are not currently counted in the certified number of township centerline miles for purposes of revenue distribution, there would be no direct fiscal effect on local governments resulting from this provision.

Indirect effect

Of the motor fuel tax levy of eight cents 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. Therefore, another factor to consider is that

if the bill decreases the number of roads that are on nonmaintained status, the number of township lane miles certified as public road mileage would increase, which may affect the share of revenue townships receive from their allocation from the Gasoline Excise Tax Fund (Fund 7060).

LSC fiscal staff: Jason Phillips, Budget Analyst

HB0318EN.doc/lb