

Fiscal Note & Local Impact Statement

127th General Assembly of Ohio

Ohio Legislative Service Commission
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BILL: **Sub. H.B. 318** DATE: **December 9, 2008**

STATUS: **As Reported by Senate Highways & Transportation** 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 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, but could easily be more than minimal.
- **Public notification and hearings on status of roads.** The bill requires that, before adopting a resolution that puts a graveled or unimproved road on nonmaintained status, a board of county commissioners or a board of township trustees must have at least two public hearings to allow for public comment and publish a notice of those hearings in a county newspaper of general circulation before the first hearing. These public notification costs would be minimal.
- **County engineer advisory opinions.** The bill also requires a county engineer to issue an advisory opinion coming to certain conclusions regarding the consequences of placing a road on nonmaintained status before such a resolution is adopted. According to the Ohio County Engineers Association, the cost for such an opinion could vary widely. An opinion could be relatively inexpensive to produce or, if an engineering study is needed, the cost could be in the thousands of dollars.



Detailed Fiscal Analysis

Overview

This bill revises the provisions that govern the placing 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. A board of county commissioners or a board of township trustees designating a road as such is not required to drag the road; cut, destroy, or remove any brush, weeds, briars, bushes, or thistles on or along the road; remove snow from the road; or maintain or repair the road in any manner.

A board of county commissioners or a board of township trustees may adopt such a resolution only if the board finds that placing the road on nonmaintained status will not unduly or adversely affect the flow of motor vehicle traffic on that road or any other road located in the immediate vicinity of that road as determined by the overall use of that road during the preceding 21 years. While it is unknown how many counties or townships have placed roads on nonmaintained status, data from the Ohio Department of Transportation (ODOT) indicate 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.

Nonmaintained status resolution notification and hearings

This bill requires a board of county commissioners or a board of township trustees to have at least two public hearings to allow for public comment prior to adopting a resolution putting a graveled or unimproved road that is not passable year-round on nonmaintained status. Counties and townships must publicize the time and place of each hearing by publishing a notice of the hearing in a newspaper of general circulation and on their web sites, if a web site is maintained, at least ten days prior to the first hearing. Printing costs for the hearing notices would likely be minimal for any county or township.

Currently, a board must find that placing the road on nonmaintained status will not unduly adversely affect the flow of motor vehicle traffic on that road or any other road in the immediate vicinity based on the road's usage over the preceding 21 years. Instead, the bill would require a board of county commissioners or a board of township trustees to request that the county engineer 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. This opinion must find that nonmaintained status will not unduly adversely affect the flow of motor vehicle traffic on that road or any adjacent road. According to the Ohio County Engineers Association, the cost for such an opinion could vary widely. An opinion could be relatively inexpensive to produce or, if an engineering study is needed, the costs could be in the thousands of dollars.

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.

Current law 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. Upon review, 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 (i.e. dragging, removing brush and snow, etc.) that revert to maintained status or are improved by the adjoining land owners. The bill would also limit the types of roads that otherwise would have been placed on nonmaintained status. 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.

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.

Annually, 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 designation, although the Department does not distinguish nonmaintained roads from other Class X roads. Therefore, since 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).

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