Fiscal Note & Local Impact Statement

127 th 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. 323** DATE: **May 29, 2008**

STATUS: **As Reported by Senate Agriculture** SPONSOR: **Rep. Gibbs**

LOCAL IMPACT STATEMENT REQUIRED: **No — Minimal cost**

CONTENTS: **To revise the Fences Law**

State Fiscal Highlights

STATE FUND	FY 2009	FY 2010	FUTURE YEARS
Department of Natural Resources – Various Funds			
Revenues	- 0 -	- 0 -	- 0 -
Expenditures	Potential increase for constructing preferred partition fences	Potential increase for constructing preferred partition fences	Potential increase for constructing preferred partition fences

Note: The state fiscal year is July 1 through June 30. For example, FY 2009 is July 1, 2008 – June 30, 2009.

- The bill requires certain fields and enclosures in which livestock are kept to be enclosed by a "preferred partition fence." In instances where no such fence exists on state-owned property, the Department of Natural Resources would be required to pay the costs associated with fence construction and maintenance.

Local Fiscal Highlights

LOCAL GOVERNMENT	FY 2008	FY 2009	FUTURE YEARS
Counties			
Revenues	Potential gain in fine revenue from new court cases	Potential gain in fine revenue from new court cases	Potential gain in fine revenue from new court cases
Expenditures	Potential minimal increase in filing costs	Potential minimal increase in filing costs	Potential minimal increase in filing costs
	Potential increase for constructing preferred partition fences	Potential increase for constructing preferred partition fences	Potential increase for constructing preferred partition fences
	Potential increase to county courts for new cases	Potential increase to county courts for new cases	Potential increase to county courts for new cases
Townships and conservancy districts			
Revenues	- 0 -	- 0 -	- 0 -
Expenditures	Potential increase for constructing preferred partition fences	Potential increase for constructing preferred partition fences	Potential increase for constructing preferred partition fences
	Potential minimal increase for townships to prepare recommendations of assignment	Potential minimal increase for townships to prepare recommendations of assignment	Potential minimal increase for townships to prepare recommendations of assignment

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

- ***New fence construction costs*.** In instances where the type of fence required by the bill does not exist, the affected political subdivision will be required to pay the costs associated with fence construction and maintenance. This might include counties, townships, and conservancy districts.

- ***County recorder costs*.** The bill permits property owners to file affidavits detailing the costs of building and maintaining partition fences in the "partition fence record." These additional filings may result in some negligible administrative cost increases for county recorders.

- ***County court costs*.** The bill permits property owners seeking reimbursement for partition fence building costs to seek remedy in a common pleas court. These new cases may result in additional court costs to counties.

- ***Township recommendations of cost assignment*.** The bill requires township trustees to prepare recommendations of cost assignment and submit these reports to the county common pleas court whenever there is a landowner dispute over partition fences. Townships may incur some small administrative costs as a result.

- ***Binding arbitration*.** If landowners do not agree with the township recommendations, they may file for binding arbitration with the county common pleas court. The cost of this arbitration is to be shared between landowners.

- ***New penalties*.** The bill creates an escalating series of criminal penalties for any person found to be interfering with the awarding of a partition fence contract, or found to be threatening anyone attempting to build or maintain a partition fence. These new criminal offenses may result in additional costs to common pleas courts, as well as some fine revenues.

Detailed Fiscal Analysis

Overview

The bill revises the Fences Law, including establishing requirements for "preferred partition fences," requirements regarding the construction and maintenance of existing or previously existing partition fences, and requirements regarding the construction and maintenance of new partition fences, and changing requirements and procedures with respect to the assignment of responsibility by a board of township trustees for constructing and maintaining partition fences. The bill would apply to the Department of Natural Resources, conservancy districts organized under the Conservancy District Law, and political subdivisions with real property interests in recreational trails. Presumably, most of these areas already have the type of fencing required by the bill, and therefore, any additional costs for such fences would be minimal.

Construction and maintenance of partition fences

The bill requires that if a partition fence exists between adjoining properties, the owners, including the state or political subdivisions, must maintain the fence in good repair in equitable shares. If a new fence is built, the owners, including the state or political subdivisions, must do so in equitable shares unless they enter into an agreement as specified in the bill. County recorders are required under the bill to keep all of the above-mentioned affidavits and property owner agreements in a document called the "Partition Fence Record," resulting in some minimal additional costs.

If an owner that did not assist in bearing the costs of building and maintaining such a partition fence subsequently uses the fence to keep livestock enclosed on the property within 30 years after the fence was built, the owner that built the fence may file a claim for reimbursement of the proportionate share of the total cost of building and maintaining the fence, provided that an affidavit has been filed with the county recorder. A proportionate share consists of one-thirtieth of the total cost of the fence, multiplied by the number of years between the time the fence was built and an affidavit was filed. If an owner of the adjoining property fails to pay the claim for reimbursement, the owner that built and maintained the fence may file a claim in a county court of common pleas to recover these costs. If this results in some new court filings, it could potentially increase county common pleas court costs; however, the number of cases resulting from these provisions is likely to be minimal.

Township reports on cost assignment and potential court arbitration costs

In situations where landowners cannot agree on an equitable distribution of fence costs, the bill requires townships to determine how these expenses are to be shared and submit these recommendations of cost assignment to courts of common pleas. This provision could result in a minimal administrative cost increase for townships. The bill also requires townships to present the owner seeking reimbursement with a prescribed document containing notification that the person is permitted to file an action in a court of common pleas, and a description of the possible financial responsibilities that may result in the board of township trustees' findings. If the landowners fail to reach an agreement on sharing costs, they may submit a request for binding arbitration to be conducted by a court-appointed arbitrator. The costs of the court-appointed arbitrator are to be borne by the landowners.

Penalties

The bill creates a series of escalating penalties for persons who attempt to obstruct the building or repair of partition fences. The bill makes it a third-degree misdemeanor for a person to obstruct or interfere with anyone lawfully constructing or maintaining a partition fence, or with the board of township trustees that is awarding a contract for such a fence. If, in committing the offense, the violator threatens physical harm, it is a second-degree misdemeanor. If the violator causes physical harm, the violation becomes a first-degree misdemeanor, escalating to a fifth-degree felony if there is serious physical harm. Depending on how many such cases would be prosecuted, there could be increased county court costs, as well as some additional fine revenue.

LSC fiscal staff: Terry Steele, Budget Analyst

HB0323SR/rh