

Sub. H. B. No. 23
As Passed by the Senate

_____ moved to amend as follows:

In line 9 of the title, after "sections" insert "746.01, 746.02, 1
746.03, 746.04, 746.05, 746.06, 746.07," 2

In line 12 of the title, delete "and" and insert ";" 3

In line 16 of the title, after "Assembly" insert "; and to repeal 4
Section 15149 of the General Code, Section 1 of Am. S.B. 200 of the 98th 5
General Assembly, and Section 3 of H.B. 69 of the 112th General Assembly" 6

In line 29, after "sections" insert "746.01, 746.02, 746.03, 746.04, 7
746.05, 746.06, 746.07," 8

After line 477, insert: 9

"Sec. 746.01. As used in this chapter: 10

"Ferguson Act of 1869" means the act titled "An act 11
relating to cities of the first class having a population 12
exceeding one hundred and fifty thousand inhabitants" passed May 13
4, 1869, (66 O. L. p. 80) pursuant to which the city of 14
Cincinnati established the Cincinnati Southern Railway, as well 15
as acts subsequently amending the act passed May 4, 1869, which 16



included sections 15093 to 15150-20 of the General Code, as 17
subsequently amended by Section 2 of S.B. 200 of the 98th 18
general assembly, Section 1 of H.B. 314 of the 102nd general 19
assembly, Section 1 of S.B. 562 of the 104th general assembly, 20
and Sections 1 and 2 of H.B. 69 of the 112th general assembly. 21

"Railway" means any railroad built under and governed by 22
the Ferguson Act of 1869, and does not include property, land, 23
right-of-way, or easements which are a part of the railroad line 24
but are no longer necessary for the operation of the railroad, 25
as determined by the railway board of trustees. 26

"Railway board of trustees" means a board of trustees 27
established by a municipal corporation pursuant to H.B. 69 of 28
the 112th general assembly as successor to a board of trustees 29
that was established by the Ferguson Act of 1869. 30

Sec. 746.02. (A) (1) A railway board of trustees may 31
solicit or receive offers for, and sell, all or any portion of a 32
railway in accordance with the provisions of this chapter. The 33
board of trustees may approve and enter into a sale agreement by 34
adopting a resolution that shall include the terms of the 35
proposed sale, and the method that will be used to determine the 36
minimum annual amount to be transmitted to the municipal 37
corporation under section 746.05 of the Revised Code, which may 38
only be amended upon consultation with the fiscal officer of the 39
municipal corporation, and which shall result in an annual 40
amount equal to or greater than the minimum approved by the 41
electors under this section. 42

(2) After the railway board of trustees has adopted the 43
resolution described in division (A) (1) of this section, the 44
railway board of trustees may adopt a resolution setting the 45
date of the election in which the question of approval of the 46

sale is to be submitted to the electors of the municipal corporation, along with the applicable ballot language as described in division (D) of this section. 47
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The board of trustees shall only sell a railway or portion of a railway upon approval by the electors of the municipal corporation, as described in divisions (B), (C), (D), and (E) of this section. 50
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(B) (1) The railway board of trustees, upon adopting a resolution under division (A) (2) of this section, shall certify the resolution to the legislative authority of the municipal corporation and to the fiscal officer of the municipal corporation. The legislative authority of the municipal corporation, upon receiving a copy of the resolution, shall certify the resolution to the board of elections not less than ninety days before the date of the election specified in the resolution. 54
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(2) The board of elections shall submit the proposed resolution for the approval or rejection of the electors of the municipal corporation at the election specified in the resolution. 63
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(C) (1) The legislative authority of the municipal corporation shall cause a notice of an election under this section to be published in a newspaper of general circulation within the municipal corporation for the two consecutive weeks before the election, or as provided in section 7.16 of the Revised Code. 67
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(2) If the board of elections maintains a web site, the board of elections shall post notice of the election on its web site not later than thirty days before the election. 73
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(3) A notice published under this section shall state the 76
time and place of the election and shall include a description 77
of the railway or portion of the railway to be sold, the name of 78
the proposed purchaser, the purchase price to be paid, including 79
the amount and due date of any installments of the purchase 80
price, the purposes for which the proceeds of the sale may be 81
used, and the initial minimum annual amount payable to the 82
municipal corporation, as described in section 746.05 of the 83
Revised Code. 84

(D) The ballot for an election under this section shall 85
include the following language, as applicable: 86

"Shall the _____ (name of railway board of trustees) be 87
authorized to sell _____ (name and description of railway or 88
portion of railway being sold) to _____ (name of the proposed 89
buyer) for a purchase price of _____ (amount proposed for the 90
sale), to be paid in _____ (number of installments) installments 91
during the years _____ (years in which an installment will be 92
paid), with the moneys received to be deposited into a trust 93
fund operated by _____ (railway board of trustees), with 94
_____ (municipal corporation) as the sole beneficiary, the 95
moneys to be annually disbursed to the municipal corporation in 96
an amount no less than _____ (dollar amount) per year, for the 97
purpose of the rehabilitation, modernization, or replacement of 98
existing streets, bridges, municipal buildings, parks and green 99
spaces, site improvements, recreation facilities, improvements 100
for parking purposes, and any other public facilities owned by 101
_____ (municipal corporation), and to pay for the costs of 102
administering the trust fund? 103

YES _____ 104

NO _____" 105

(E) If the question is approved by a majority of electors 106
voting on the question, the railway board of trustees may 107
proceed and take all necessary actions to complete the sale on 108
terms consistent with those described in the resolution adopted 109
under division (A) of this section. Notwithstanding any other 110
provisions of the Revised Code, any net proceeds from a sale 111
pursuant to this section shall be deposited into the trust fund 112
established under section 746.03 of the Revised Code. 113

(F) If the question is not approved by a majority of the 114
electors voting on the question, the railway board of trustees 115
shall not move forward with the sale. 116

(G) If a sale of a railway or portion of a railway has 117
been approved by the electors as provided in this section, then, 118
notwithstanding any other provision of the Revised Code or of 119
the Ferguson Act of 1869, no railway board of trustees shall 120
amend its rules without the approval of the electors of the 121
municipal corporation, as provided in division (H) of this 122
section. 123

(H) (1) After the sale of a railway or portion of a 124
railway, a railway board of trustees may amend its rules by 125
adopting a resolution with the proposed rule changes, and 126
setting the date of the election in which the question of 127
approval of the proposed rule changes is to be submitted to the 128
electors of the municipal corporation. 129

(2) The railway board of trustees, upon adopting a 130
resolution under division (H) (1) of this section, shall certify 131
the resolution to the legislative authority of the municipal 132
corporation and to the fiscal officer of the municipal 133
corporation. The legislative authority of the municipal 134
corporation, upon receiving a copy of the resolution, shall 135

certify the resolution to the board of elections not less than 136
ninety days before the date of the election specified in the 137
resolution. 138

(3) The board of elections shall submit the proposed 139
resolution for the approval or rejection of the electors of the 140
municipal corporation at the election specified in the 141
resolution. 142

(4) The legislative authority of the municipal corporation 143
shall cause a notice of an election under this division to be 144
published in a newspaper of general circulation within the 145
municipal corporation for the two consecutive weeks before the 146
election, or as provided in section 7.16 of the Revised Code. 147

(5) If the board of elections maintains a web site, the 148
board of elections shall post notice of the election on its web 149
site not later than thirty days before the election. 150

(6) A notice published under this division shall state the 151
time and place of the election and shall include the proposed 152
rule changes and a description of the proposed rule changes. 153

(I) The ballot for an election under this division shall 154
include the following language: 155

"Shall the _____ (name of railway board of trustees) be 156
authorized to make the following amendments to its rules: 157
(proposed rule changes)? 158

YES _____ 159

NO _____" 160

(J) If the question is approved by a majority of electors 161
voting on the question, the rule changes shall take effect 162
immediately. 163

(K) If the question is not approved by a majority of the 164
electors voting on the question, the rule changes shall not take 165
effect. 166

(L) Divisions (G) to (K) of this section do not affect the 167
ability of a legislative authority of a municipal corporation to 168
govern the railway board of trustees with ordinances or other 169
legislation, as provided in the Ferguson Act of 1869 or the 170
Revised Code. 171

Sec. 746.03. (A) A railway board of trustees that sells a 172
railway or any portion of a railway under section 746.02 of the 173
Revised Code shall establish a railway proceeds trust fund for 174
the purpose of receiving the net proceeds of the sale. The 175
municipal corporation that owned the railway or portion of the 176
railway before the sale shall be the sole beneficiary of the 177
trust fund. Any funds in the trust fund shall not be considered 178
part of the unencumbered balance or revenue of the subdivision 179
under section 5705.35 or 5705.36 of the Revised Code. 180

(B) The railway board of trustees shall manage and 181
administer the railway proceeds trust fund established under 182
division (A) of this section as trustees, in accordance with 183
this chapter and with ordinances passed by the legislative 184
authority of the municipal corporation not in conflict with this 185
chapter. 186

(C) Notwithstanding section 9.481 of the Revised Code, no 187
individual may be appointed to the railway board of trustees 188
after the effective date of this section unless the individual 189
is a resident of the municipal corporation. 190

Sec. 746.04. (A) A railway board of trustees that 191
establishes a trust fund under section 746.03 of the Revised 192

Code may invest and reinvest the moneys and assets held in the 193
trust fund, subject to this chapter. The railway board of 194
trustees shall invest and reinvest under the prudent investor 195
standard of care, as described in section 5809.02 of the Revised 196
Code. 197

(B) The railway board of trustees shall retain at least 198
one independent financial advisor to assist the railway board of 199
trustees in investing the trust fund. The railway board of 200
trustees may retain managers, administrative staff, agents, 201
attorneys, and employees, and engage advisors, as are 202
appropriate and reasonable in relation to the assets of the 203
trust fund, the purposes of the trust, and the skills and 204
knowledge of the members of the railway board of trustees, in 205
order to fulfill the board's duties and responsibilities in 206
administering the trust fund. The railway board of trustees 207
shall provide for payment of these and other reasonable expenses 208
of administering the trust fund from the investment earnings on 209
the trust fund. 210

(C) The railway board of trustees shall adopt management 211
and investment policies containing objectives and criteria 212
designed to ensure the trust fund is administered efficiently 213
and self-sustaining, and that the money and assets in the trust 214
fund are not diminished while providing the municipal 215
corporation payments pursuant to section 746.05 of the Revised 216
Code. These policies shall address asset allocation targets and 217
ranges, risk factors, asset class benchmarks, eligible 218
investments, time horizons, total return objectives, a strategy 219
for long-term growth of the principal of the trust fund, 220
competitive procurement processes, fees and administrative 221
expenses, and performance evaluation guidelines. 222

The management and investment policies, and any amendments 223
to those policies, shall be adopted after consultation with the 224
fiscal officer of the municipal corporation. 225

The railway board of trustees shall make public any 226
management and investment policies it adopts under this section. 227

(D) The railway board of trustees, following the creation 228
of a trust fund under this chapter, shall report to the fiscal 229
officer of the municipal corporation, each calendar year, the 230
fiscal transactions of the trust fund for the calendar year, the 231
amounts of accumulated moneys and securities, and the most 232
recent balance sheet showing the financial condition of the fund 233
by means of audited financial statements. The reports shall be 234
delivered at such times, and shall be in a form and content, as 235
reasonably requested by the fiscal officer of the municipal 236
corporation. 237

(E) Except as otherwise provided in this chapter, no 238
member of the railway board of trustees shall have any direct or 239
indirect interest in the gains or profits of any investment made 240
by the railway board of trustees. No member or person connected 241
with the railway board of trustees directly or indirectly, for 242
self or as an agent or partner of others, shall borrow any of 243
the funds or deposits of the railway board of trustees or trust 244
fund, or in any manner use the same except to make such current 245
and necessary payments as are authorized by the railway board of 246
trustees. No member or agent of the railway board of trustees 247
shall become an indorser or surety or become in any manner an 248
obligor for moneys loaned by or borrowed from the railway board 249
of trustees. 250

(F) The railway board of trustees, and the management and 251
investment of the trust fund, is not subject to Chapter 135., 252

sections 731.56 to 731.59, or any other conflicting provisions 253
of the Revised Code. 254

Sec. 746.05. Not later than the thirtieth day of September 255
of each year, the railway board of trustees shall certify to the 256
municipal corporation the amount of funds that the railway board 257
of trustees will disburse to the municipal corporation over the 258
course of the municipal corporation's immediately following 259
fiscal year. During the municipal corporation's immediately 260
following fiscal year, and with such frequency and in such 261
installments as may be determined by the railway board of 262
trustees after consultation with the fiscal officer of the 263
municipal corporation, the railway board of trustees shall 264
transmit to the municipal corporation the certified amount. 265

The railway board of trustees shall determine the amount 266
transferred pursuant to this section, which shall be not less 267
than the amount approved by the electors as provided in section 268
746.02 of the Revised Code, increased each year in the manner 269
set forth in the methodology approved pursuant to that section. 270
Amounts transferred pursuant to this section shall be paid from 271
investment earnings of the trust fund after payments of expenses 272
incurred under section 746.04 of the Revised Code. If there are 273
not sufficient investment earnings in a year to pay the amount 274
certified pursuant to this section, the railway board of 275
trustees shall remit the remainder of the certified amount to 276
the municipal corporation from the principal amount of the trust 277
fund. 278

Sec. 746.06. (A) As used in this section: 279

"Debt service" means the principal, interest, and 280
redemption premium payments, and any deposits pertaining 281
thereto, required with respect to bonds. 282

"Existing infrastructure improvements" means streets, 283
bridges, municipal buildings, parks and green space, site 284
improvements, recreation facilities, improvements for parking 285
purposes, and any other public facilities that are owned by a 286
municipal corporation with a useful life of five or more years. 287
"Existing infrastructure improvements" does not include the 288
construction of new infrastructure improvements. 289

(B) A municipal corporation that receives disbursements 290
under section 746.05 of the Revised Code shall deposit the 291
moneys received into a fund designated by the fiscal officer of 292
the municipal corporation. The municipal corporation shall spend 293
the funds received solely on the rehabilitation, modernization, 294
or replacement of existing infrastructure improvements. The 295
municipal corporation shall not use the funds received for 296
payment of debt service or for the construction of new 297
infrastructure improvements. 298

Sec. 746.07. All net earnings and income from the lease of 299
a railway established under the Ferguson Act of 1869 shall be 300
paid into the treasury of the municipal corporation that 301
established the railway, to the credit of the sinking fund or 302
bond retirement fund." 303

After line 4821, insert: 304

"Section 610.50. That Section 15149 of the General Code, 305
Section 1 of Am. S.B. 200 of the 98th General Assembly, and 306
Section 3 of H.B. 69 of the 112th General Assembly are hereby 307
repealed. 308

Section 610.51. Any proceedings pending or in progress on 309
the effective date of sections 746.01, 746.02, 746.03, 746.04, 310
746.05, 746.06, and 746.07 of the Revised Code as enacted by 311

this act are deemed to have been taken in conformity with those 312
sections." 313

The motion was _____ agreed to.

SYNOPSIS 314

Municipal sale of railways - railway board of trustees 315

R.C. 746.01 to 746.07; Sections 610.50 and 610.51 316

Reinserts into the bill provisions authorizing a railway 317
board of trustees created under the Ferguson Act of 1869 to sell 318
all or part of a municipally owned railway and create a trust 319
fund from the proceeds of the sale upon approval by the electors 320
of the municipal corporation. 321

Adds new provisions prohibiting a railway board of 322
trustees from making rule changes without the approval of the 323
electors of the municipal corporation. 324