

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, except as provided in section 42
746.05 of the Revised Code. 43

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

date of the election in which the question of approval of the 47
sale is to be submitted to the electors of the municipal 48
corporation, along with the applicable ballot language as 49
described in division (D) of this section. The date of the 50
election shall be either the date of the primary or the general 51
election in 2023 or 2024. 52

The board of trustees shall only sell a railway or portion 53
of a railway upon approval by the electors of the municipal 54
corporation, as described in divisions (B), (C), (D), and (E) of 55
this section. 56

(B) (1) The railway board of trustees, upon adopting a 57
resolution under division (A) (2) of this section, shall certify 58
the resolution to the legislative authority of the municipal 59
corporation and to the fiscal officer of the municipal 60
corporation. The legislative authority of the municipal 61
corporation, upon receiving a copy of the resolution, shall 62
certify the resolution to the board of elections not less than 63
ninety days before the date of the election specified in the 64
resolution. 65

(2) The board of elections shall submit the proposed 66
resolution for the approval or rejection of the electors of the 67
municipal corporation at the election specified in the 68
resolution. 69

(C) (1) The legislative authority of the municipal 70
corporation shall cause a notice of an election under this 71
section to be published in a newspaper of general circulation 72
within the municipal corporation for the two consecutive weeks 73
before the election, or as provided in section 7.16 of the 74
Revised Code. 75

(2) If the board of elections maintains a web site, the 76
board of elections shall post notice of the election on its web 77
site not later than thirty days before the election. 78

(3) A notice published under this section shall state the 79
time and place of the election and shall include a description 80
of the railway or portion of the railway to be sold, the name of 81
the proposed purchaser, the purchase price to be paid, including 82
the amount and due date of any installments of the purchase 83
price, the purposes for which the proceeds of the sale may be 84
used, and the initial minimum annual amount payable to the 85
municipal corporation, as described in section 746.05 of the 86
Revised Code. 87

(D) The ballot for an election under this section shall 88
include the following language, as applicable: 89

"Shall the _____ (name of railway board of trustees) be 90
authorized to sell _____ (name and description of railway or 91
portion of railway being sold) to an entity, the ultimate parent 92
company of which is _____ (name of ultimate parent company) 93
for a purchase price of _____ (amount proposed for the sale), 94
to be paid in _____ (number of installments) installments during 95
the years _____ (years in which an installment will be paid), 96
with the moneys received to be deposited into a trust fund 97
operated by _____ (railway board of trustees), with _____ 98
(municipal corporation) as the sole beneficiary, the moneys to 99
be annually disbursed to the municipal corporation in an amount 100
no less than _____ (dollar amount) per year, for the purpose of 101
the rehabilitation, modernization, or replacement of existing 102
streets, bridges, municipal buildings, parks and green spaces, 103
site improvements, recreation facilities, improvements for 104
parking purposes, and any other public facilities owned by _____ 105

(municipal corporation), and to pay for the costs of 106
administering the trust fund? 107

YES _____ 108

NO _____" 109

(E) If the question is approved by a majority of electors 110
voting on the question, the railway board of trustees may 111
proceed and take all necessary actions to complete the sale on 112
terms consistent with those described in the resolution adopted 113
under division (A) of this section. Notwithstanding any other 114
provisions of the Revised Code, any net proceeds from a sale 115
pursuant to this section shall be deposited into the trust fund 116
established under section 746.03 of the Revised Code. 117

(F) If the question is not approved by a majority of the 118
electors voting on the question, the railway board of trustees 119
shall not move forward with the sale and may not again submit to 120
the electors a proposal to sell a railway or portion of a 121
railway, unless otherwise authorized by the general assembly. 122

Sec. 746.03. (A) A railway board of trustees that sells a 123
railway or any portion of a railway under section 746.02 of the 124
Revised Code shall establish a railway proceeds trust fund for 125
the purpose of receiving the net proceeds of the sale. The 126
municipal corporation that owned the railway or portion of the 127
railway before the sale shall be the sole beneficiary of the 128
trust fund. Any funds in the trust fund shall not be considered 129
part of the unencumbered balance or revenue of the subdivision 130
under section 5705.35 or 5705.36 of the Revised Code. 131

(B) The railway board of trustees shall manage and 132
administer the railway proceeds trust fund established under 133
division (A) of this section as trustees, in accordance with 134

this chapter and with ordinances passed by the legislative 135
authority of the municipal corporation not in conflict with this 136
chapter. 137

(C) Notwithstanding section 9.481 of the Revised Code, no 138
individual may be appointed to the railway board of trustees 139
after the effective date of this section unless the individual 140
is a resident of the municipal corporation. 141

Sec. 746.04. (A) A railway board of trustees that 142
establishes a trust fund under section 746.03 of the Revised 143
Code may invest and reinvest the moneys and assets held in the 144
trust fund, subject to this chapter. The railway board of 145
trustees shall invest and reinvest under the prudent investor 146
standard of care, as described in section 5809.02 of the Revised 147
Code. 148

(B) The railway board of trustees shall retain at least 149
one independent financial advisor to assist the railway board of 150
trustees in investing the trust fund. The railway board of 151
trustees may retain managers, administrative staff, agents, 152
attorneys, and employees, and engage advisors, as are 153
appropriate and reasonable in relation to the assets of the 154
trust fund, the purposes of the trust, and the skills and 155
knowledge of the members of the railway board of trustees, in 156
order to fulfill the board's duties and responsibilities in 157
administering the trust fund. The railway board of trustees 158
shall provide for payment of these and other reasonable expenses 159
of administering the trust fund from the investment earnings on 160
the trust fund. 161

(C) The railway board of trustees shall adopt management 162
and investment policies containing objectives and criteria 163
designed to ensure the trust fund is administered efficiently 164

and self-sustaining, and that the money and assets in the trust 165
fund are not diminished while providing the municipal 166
corporation payments pursuant to section 746.05 of the Revised 167
Code. These policies shall address asset allocation targets and 168
ranges, risk factors, asset class benchmarks, eligible 169
investments, time horizons, total return objectives, a strategy 170
for long-term growth of the principal of the trust fund, 171
competitive procurement processes, fees and administrative 172
expenses, and performance evaluation guidelines. 173

The management and investment policies, and any amendments 174
to those policies, shall be adopted after consultation with the 175
fiscal officer of the municipal corporation. 176

The railway board of trustees shall make public any 177
management and investment policies it adopts under this section. 178

(D) The railway board of trustees, following the creation 179
of a trust fund under this chapter, shall report to the fiscal 180
officer of the municipal corporation, each calendar year, the 181
fiscal transactions of the trust fund for the calendar year, the 182
amounts of accumulated moneys and securities, and the most 183
recent balance sheet showing the financial condition of the fund 184
by means of audited financial statements. The reports shall be 185
delivered at such times, and shall be in a form and content, as 186
reasonably requested by the fiscal officer of the municipal 187
corporation. 188

(E) Except as otherwise provided in this chapter, no 189
member of the railway board of trustees shall have any direct or 190
indirect interest in the gains or profits of any investment made 191
by the railway board of trustees. No member or person connected 192
with the railway board of trustees directly or indirectly, for 193
self or as an agent or partner of others, shall borrow any of 194

the funds or deposits of the railway board of trustees or trust 195
fund, or in any manner use the same except to make such current 196
and necessary payments as are authorized by the railway board of 197
trustees. No member or agent of the railway board of trustees 198
shall become an indorser or surety or become in any manner an 199
obligor for moneys loaned by or borrowed from the railway board 200
of trustees. 201

(F) The railway board of trustees, and the management and 202
investment of the trust fund, is not subject to Chapter 135., 203
sections 731.56 to 731.59, or any other conflicting provisions 204
of the Revised Code. 205

Sec. 746.05. (A) Not later than the thirtieth day of 206
September of each year, the railway board of trustees shall 207
certify to the municipal corporation the principal amount 208
remaining in the trust fund, and the amount of funds that the 209
railway board of trustees will disburse to the municipal 210
corporation over the course of the municipal corporation's 211
immediately following fiscal year. During the municipal 212
corporation's immediately following fiscal year, and with such 213
frequency and in such installments as may be determined by the 214
railway board of trustees after consultation with the fiscal 215
officer of the municipal corporation, the railway board of 216
trustees shall transmit to the municipal corporation the 217
certified amount. 218

(B) The railway board of trustees shall determine the 219
amount transferred pursuant to this section, which, except as 220
provided in division (C) of this section, shall be not less than 221
the amount approved by the electors as provided in section 222
746.02 of the Revised Code, increased each year in the manner 223
set forth in the methodology approved pursuant to that section. 224

Amounts transferred pursuant to this section shall be paid from 225
investment earnings of the trust fund after payments of expenses 226
incurred under section 746.04 of the Revised Code. If there are 227
not sufficient investment earnings in a year to pay the amount 228
certified pursuant to this section, the railway board of 229
trustees shall remit the remainder of the certified amount to 230
the municipal corporation from the principal amount of the trust 231
fund, except as provided in division (C) of this section. 232

(C) If the principal amount in the trust fund, as 233
certified by the railway board of trustees under division (A) of 234
this section, is at an amount seventy-five per cent or less than 235
the principal amount in the trust fund certified by the railway 236
board of trustees in the previous fiscal year under division (A) 237
of this section, the railway board of trustees shall cease 238
making disbursements from the trust fund to the municipal 239
corporation. The railway board of trustees shall resume making 240
disbursements under this section when the railway board of 241
trustees has certified to the municipal corporation, under 242
division (A) of this section, that the principal amount in the 243
trust fund is equal to or greater than the principal amount in 244
the trust fund as certified by the railway board of trustees in 245
the fiscal year before the fiscal year in which disbursements 246
ceased. 247

Sec. 746.06. (A) As used in this section: 248

"Debt service" means the principal, interest, and 249
redemption premium payments, and any deposits pertaining 250
thereto, required with respect to bonds. 251

"Existing infrastructure improvements" means streets, 252
bridges, municipal buildings, parks and green space, site 253
improvements, recreation facilities, improvements for parking 254

purposes, and any other public facilities that are owned by a 255
municipal corporation with a useful life of five or more years. 256
"Existing infrastructure improvements" does not include the 257
construction of new infrastructure improvements. 258

(B) A municipal corporation that receives disbursements 259
under section 746.05 of the Revised Code shall deposit the 260
moneys received into a fund designated by the fiscal officer of 261
the municipal corporation. The municipal corporation shall spend 262
the funds received solely on the rehabilitation, modernization, 263
or replacement of existing infrastructure improvements. The 264
municipal corporation shall not use the funds received for 265
payment of debt service or for the construction of new 266
infrastructure improvements. 267

Sec. 746.07. All net earnings and income from the lease of 268
a railway established under the Ferguson Act of 1869 shall be 269
paid into the treasury of the municipal corporation that 270
established the railway, to the credit of the sinking fund or 271
bond retirement fund." 272

After line 4821, insert: 273

"Section 610.50. That Section 15149 of the General Code, 274
Section 1 of Am. S.B. 200 of the 98th General Assembly, and 275
Section 3 of H.B. 69 of the 112th General Assembly are hereby 276
repealed. 277

Section 610.51. Any proceedings pending or in progress on 278
the effective date of sections 746.01, 746.02, 746.03, 746.04, 279
746.05, 746.06, and 746.07 of the Revised Code as enacted by 280
this act are deemed to have been taken in conformity with those 281
sections." 282

The motion was _____ agreed to.

<u>SYNOPSIS</u>	283
Municipal sale of railways - railway board of trustees	284
R.C. 746.01 to 746.07; Sections 610.50 and 610.51	285
Reinserts into the bill provisions authorizing a railway	286
board of trustees created under the Ferguson Act of 1869 to sell	287
all or part of a municipally owned railway and create a trust	288
fund from the proceeds of the sale upon approval by the electors	289
of the municipal corporation, with the following changes:	290
Permits a railway board of trustees to submit the question	291
of the sale of the railway to the electors only once, at either	292
a general election or a primary election in 2023 or 2024.	293
Changes ballot language to identify ultimate parent	294
company of the purchasing entity, rather than the buyer.	295
Provides that, if the principal amount of the fund	296
decreases by 25% or more, as measured against the principal	297
amount of the trust fund certified in the previous fiscal year,	298
payments to the municipal corporation are suspended until the	299
trust fund has fully recouped its losses.	300