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OHIO LEGISLATIVE SERVICE COMMISSION

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S.B. 361

136th General Assembly

Bill Analysis

Version: As Introduced

Primary Sponsor: Sen. Schaffer

Emily E. Wendel, Attorney

SUMMARY

- Prohibits any state or local public agency from using its eminent domain power to take land for use as a recreational trail.

DETAILED ANALYSIS

Recreational trails

The bill prohibits any state or local public agency from using its eminent domain power to take land for use as a trail for hiking, bicycling, horseback riding, ski touring, canoeing, or other nonmotorized forms of recreational travel. Under the bill, such a trail is not considered a “public use” for eminent domain purposes.¹

Existing law allows the Director of Natural Resources to acquire property for the purpose of establishing, protecting, and maintaining state recreational trails, including the power to appropriate limited amounts of property for that purpose through eminent domain. Although the bill does not change that statute, the bill would appear to override it.²

Continuing law also allows a local park district to “create parks, parkways, forest reservations, and other reservations and afforest, develop, improve, protect, and promote the use of the same in such manner as the [district] board [of commissioners] deems conducive to

¹ R.C. 163.01.

² R.C. 1519.01 and 1519.02, not in the bill.

the general welfare.” To the extent that those activities might include creating recreational trails, the bill would prevent a park district from using eminent domain for that purpose.³

The bill applies only to the creation of trails using eminent domain. That is, it would not prevent a public agency from building or maintaining recreational trails on public land if the agency otherwise has the legal authority to do so, and it would not prevent a landowner from voluntarily selling or donating land for the purpose of building a recreational trail. Further, if challenged, a reviewing court might find that a municipality or chartered county still has the authority to create recreational trails through eminent domain under its constitutional home rule powers, regardless of a limitation in the Revised Code. (See “**Under home rule**,” below.)

Background on eminent domain

The Ohio Constitution gives the government the power of eminent domain, which allows it to bring a court proceeding to appropriate, or “take,” land from a private owner without the owner’s consent. However, two factors must be met before the government may do so:⁴

1. The property must be taken “for public use.”
2. The owner must be compensated by an amount of money assessed by a jury.

Under the Revised Code

The Revised Code delegates eminent domain power to various state and local public agencies for specified purposes. For example, the Director of Transportation may appropriate land as necessary to build highways, roads, and bridges.⁵ The Appropriation of Property Law lays out the process any agency must use when exercising that authority.⁶

Importantly, the law allows a public agency to appropriate land only “as necessary and for a public use.” Certain purposes, such as roads, public parks, and government buildings, are presumed to be a public use. The agency must prove in court, by a preponderance of the evidence, that the taking meets those requirements.⁷

Under home rule

In 1953, the Ohio Supreme Court ruled that the home rule provisions of the Ohio Constitution give the power of eminent domain to each municipality and chartered county within its territory as part of the power of local self-government. When a municipality or chartered county uses eminent domain, it must meet the restrictions in the Ohio Constitution, including

³ R.C. 1545.11, not in the bill. In 2024, the Mahoning County Court of Common Pleas ruled that this statute does not allow a park district to appropriate land to construct or maintain a bike trail. The ruling applies only in Mahoning County. *Board of Commissioners of the Mill Creek MetroPark Park District v. Cameron*, Case No. 2018-CV-02795 (C.P. Mahoning Co. November 14, 2024).

⁴ Ohio Constitution, Article I, Section 19.

⁵ R.C. 5519.01, not in the bill.

⁶ R.C. Chapter 163.

⁷ R.C. 163.021(A), not in the bill.

some that apply specifically to those local entities. However, the court determined that procedures or restrictions found in state law do not apply to municipal or chartered county projects.⁸

HISTORY

Action	Date
Introduced	02-10-26

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⁸ *State ex rel. Bruestle v. Rich*, 159 Ohio St. 13, 32 (1953). See also Ohio Const., art. XVIII, secs. 3, 4, 10, and 11 and art. X, sec. 3.