



COUNTY ADVISORY BULLETIN

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HOUSE BILL 653 OF 122ND GENERAL ASSEMBLY AUTHORIZES TRIMMING AND REMOVAL OF TREES AND SHRUBS ALONG ROADS AND SIDEWALKS; ALLOWS REPAIR OF DRIVEWAYS LOCATED WITHIN SIDEWALK EASEMENTS

Effective Date: March 18, 1999.

Revised Code Sections Affected: 5543.10, 5543.14, amended.

Lead Sponsor: Schuler (R-Sycamore Township).

House Co-Sponsors: Brading (R-Wapakoneta), Patton (D-Youngstown), Mottley (R-West Carrollton), Clancy (R-Cincinnati), Boggs (D-Andover), Garcia (R-Toledo), Cates (R-West Chester), Logan (D-Lisbon), Taylor (R-Norwalk), O'Brien (R-Cincinnati), Olman (R-Sylvania), Whalen (D-Cleveland), Ogg (D-Sciotoville), Sawyer (D-Mansfield), Terwilliger (R-Mainville), Opfer (D-Oak Harbor), Van Vyven (R-Sharonville), Lucas (D-Mineral Ridge), Britton (D-Cincinnati), Jolivette (R-Hamilton), Allen (D-Dayton), Corbin (R-Dayton), Perz (R-Toledo), Young (R-Painesville), and Evans (R-Newark).

Senate Co-Sponsors: Carnes (R-St.Clairsville), Blessing (R-Cincinnati), Gaeth (R-Defiance), Mumper (R-Marion), and White (R-Manchester).

INTRODUCTION

One of the largest areas of liability for a county results from its responsibility for roads and bridges. One particular area of concern is liability for obstructions such as boulders and trees growing in the right-of-way or from branches or tree limbs on private property that extend onto the public right-of-way.

If a driver loses control of a vehicle and goes off the road and hits a tree, the county may be subject to liability. Likewise, if a person stops at a stop sign and accident results because the person cannot see approaching traffic because of an overhanging tree limb, the county may be sued for negligence. Counties have indeed been found liable for serious accidents resulting from roads being obstructed by trees and shrubs and from drivers striking trees in the road right-of-way.

Before the passage of HB 653, a property owner could refuse to give the county permission to trim or remove trees and shrubs. The county would then have to choose between permitting the hazard to continue and be liable for any resulting accidents and facing possible legal action from the property owner if the trees and shrubs were removed. With the passage of HB 653, counties and townships are able to remove the trees and shrubs without the consent of the abutting landowner. The legislation should help reduce the liability that results from obstructions growing in rights-of-ways and from roads being obstructed by trees and shrubs.

OVERVIEW OF HB 653

HB 653 of the 122nd General Assembly, which became effective on March 18, 1999, grants new authority to county engineers, boards of county commissioners, and boards of township trustees with regard to trimming and removing trees, shrubs and other vegetation along roads and sidewalks and with regard to repairing and maintaining driveways located within sidewalk easements.

The specific changes made in HB 653:

1. Authorize a county engineer to trim or remove trees and shrubs growing in or encroaching upon any road under the engineer's control, without consent of the abutting landowner. The bill authorizes a board of township trustees to do the same on roads under its control. This provision is discussed in section 1 below.
2. Authorize a county engineer to trim or remove trees and shrubs growing in or encroaching upon "the right-of-way of the easement of a public sidewalk" along a road maintained by a county. The provision grants the same authority to a board of township trustees for roads maintained by a township. This provision is discussed in section 2 below.
3. Authorize a board of county commissioners to repair or reconstruct a driveway located within a sidewalk easement as part of a sidewalk construction or improvement project. The bill grants the same authority to a board of township trustees. This provision is described in section 3 below.

1. TRIMMING OR REPAIRING TREES AND SHRUBS ALONG A ROAD - ORC 5543.14

Before the passage of HB 653, a county engineer had the authority to control trees and shrubs along county roads, but only with the consent of the abutting landowner. A board of township trustees had the same authority with respect to township roads.

HB 653 authorizes a county engineer or board of township trustees to trim or remove any trees, shrubs or other vegetation either growing in or encroaching onto the right-of-way of

roads under their jurisdiction. This trimming or removal may be done whenever, in the engineer's or board of trustees' judgement, it is necessary to improve or maintain a road or to facilitate the right of the public to travel uninterrupted along a road. It is no longer necessary for a county engineer or board of township trustees to obtain the consent of an abutting landowner before trimming or removing trees or shrubs on a road.

HB 653 also states that a county engineer or board of township trustees is not required to compensate an abutting landowner for a governmental taking of private property when trimming or removing trees and shrubs along a road.

However, this language does not absolutely bar landowner compensation. Section 19 of Article I of the Ohio Constitution and the Fifth Amendment of the United States Constitution prohibit any county, township or other unit of government from taking private property without compensation. There may be situations where compensation would have to be paid to a property owner whose trees or shrubs have been trimmed or removed, despite the language in HB 653 that states compensation is not required. See Rummell v. Ohio Department of Transportation, 3 Ohio App. 3d 38 (1981).

2. TRIMMING OR REPAIRING TREES AND SHRUBS ALONG A ROAD - ORC 5543.10

HB 653 authorizes a county engineer or board of township trustees to trim or remove all trees, shrubs, or other vegetation growing in or encroaching onto the right-of-way of the easement of a public sidewalk along a road in the engineer's or board's jurisdiction. Previous law did not specifically authorize a county engineer or board of township trustees to trim or remove vegetation along a sidewalk.

The bill authorizes trimming and removal of trees and shrubs along a sidewalk whenever it is necessary, in the judgement of the county engineer or the board of township trustees, to improve or maintain the sidewalk or to facilitate the right of the public to travel uninterrupted along the sidewalk.

It is not clear from the language of HB 653 whether abutting landowners must be given notice of an engineer or board's intention to trim or remove trees or shrubs along a sidewalk.

3. DRIVEWAYS LOCATED WITHIN EASEMENTS - ORC 5543.10 (A)

HB 653 grants a board of county commissioners or township trustees the authority to order the repair or maintenance of a driveway located within a sidewalk easement as part of a sidewalk construction or improvement project. Before the passage of HB 653, Ohio law did not specifically authorize commissioners or trustees to order the repair or reconstruction of a driveway that was part of a sidewalk easement.

This authority applies in cases where commissioners or trustees order new construction, repair or maintenance work on sidewalks with or without a petition from abutting

landowners. Commissioners and trustees have authority to assess abutting property owners for all, part, or none of the cost of the sidewalk improvements that involve driveways within public easements.

For more information on HB 653, please contact Doug Putnam, CCAO Research and Information Manager, at 614-221-5627 or dputnam@ccao.org.