

Chapter 746 | Railway board of trustees

Ohio Revised Code / Title 7 Municipal Corporations

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Section

Section 746.01 | Ferguson Act of 1869; definitions.

Effective: June 30, 2023 **Latest Legislation:** House Bill 23 - 135th General Assembly

As used in this chapter:

"Ferguson Act of 1869" means the act titled "An act relating to cities of the first class having a population exceeding one hundred and fifty thousand inhabitants" passed May 4, 1869, (66 O. L. p. 80) pursuant to which the city of Cincinnati established the Cincinnati Southern Railway, as well as acts subsequently amending the act passed May 4, 1869, which included sections 15093 to 15150-20 of the General Code, as subsequently amended by Section 2 of S.B. 200 of the 98th general assembly, Section 1 of H.B. 314 of the 102nd general assembly, Section 1 of S.B. 562 of the 104th general assembly, and Sections 1 and 2 of H.B. 69 of the 112th general assembly.

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

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

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Section 746.02 | Sale of railway; submission to electors.

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(A)(1) A railway board of trustees may solicit or receive offers for, and sell, all or any portion of a railway in accordance with the provisions of this chapter. The board of trustees may approve and enter into a sale agreement by adopting a resolution that shall include the terms of the proposed sale, and the method that will be used to determine the minimum annual amount to be transmitted to the municipal corporation under section [746.05](#) of the Revised Code, which may only be amended upon consultation with the fiscal officer of the municipal corporation, and which shall result in an annual amount equal to or greater than the minimum approved by the electors under this section, except as provided in section [746.05](#) of the Revised Code.

(2) After the railway board of trustees has adopted the resolution described in division (A)(1) of this section, the railway board of trustees may adopt a resolution setting the date of the election in which the question of approval of the 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. The date of the election shall be either the date of the primary or the general election in 2023 or 2024.

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.

(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.

(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.

(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.

(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.

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

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

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

YES _____

NO _____"

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

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

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[Section 746.03](#) | [Railway proceeds trust fund.](#)

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(A) A railway board of trustees that sells a railway or any portion of a railway under section [746.02](#) of the Revised Code shall establish a railway proceeds trust fund for the purpose of receiving the net proceeds of the sale. The municipal corporation that owned the railway or portion of the railway before the sale shall be the sole beneficiary of the trust fund. Any funds in the trust fund shall not be considered part of the unencumbered balance or revenue of the subdivision under section [5705.35](#) or [5705.36](#) of the Revised Code.

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

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

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Section 746.04 | Trust fund investment criteria; board obligations.

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(A) A railway board of trustees that establishes a trust fund under section [746.03](#) of the Revised Code may invest and reinvest the moneys and assets held in the trust fund, subject to this chapter. The railway board of trustees shall invest and reinvest under the prudent investor standard of care, as described in section [5809.02](#) of the Revised Code.

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

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

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

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

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

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

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

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Section 746.05 | Fund disbursement to municipal corporation.

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(A) Not later than the thirtieth day of September of each year, the railway board of trustees shall certify to the municipal corporation the principal amount remaining in the trust fund, and the amount of funds that the railway board of trustees will disburse to the municipal corporation over the course of the municipal corporation's immediately following fiscal year. During the municipal corporation's immediately following fiscal year, and with such frequency and in such installments as may be determined by the railway board of trustees after consultation with the fiscal officer of the municipal corporation, the railway board of trustees shall transmit to the municipal corporation the certified amount.

(B) The railway board of trustees shall determine the amount transferred pursuant to this section, which, except as provided in division (C) of this section, shall be not less than the amount approved by the electors as provided in section [746.02](#) of the Revised Code, increased each year in the manner set forth in the methodology approved pursuant to that section. Amounts transferred pursuant to this section shall be paid from investment earnings of the trust fund after payments of expenses incurred under section [746.04](#) of the Revised Code. If there are not sufficient investment earnings in a year to pay the amount certified pursuant to this section, the railway board of trustees shall remit the remainder of the certified amount to the municipal corporation from the principal amount of the trust fund, except as provided in division (C) of this section.

(C) If the principal amount in the trust fund, as certified by the railway board of trustees under division (A) of this section, is at an amount seventy-five per cent or less than the principal amount in the trust fund certified by the railway board of trustees in the previous fiscal year under division (A) of this section, the railway board of trustees shall cease making disbursements from the trust fund to the municipal corporation. The railway board of trustees shall resume making disbursements under this section when the railway board of trustees has certified to the municipal corporation, under division (A) of this section, that the principal amount in the trust fund is equal to or greater than the principal amount in the trust fund as certified by the railway board of trustees in the fiscal year before the fiscal year in which disbursements ceased.

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Section 746.06 | Use of funds by municipal corporation.

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(A) As used in this section:

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

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

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

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Section 746.07 | Earnings and income from lease of railway.

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

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