

**As Introduced**

**134th General Assembly  
Regular Session  
2021-2022**

**S. B. No. 369**

**Senators Thomas, Wilson**

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**A BILL**

To enact sections 746.01, 746.02, 746.03, 746.04, 1  
746.05, 746.06, and 746.07 of the Revised Code, 2  
and to repeal Section 15149 of the General Code, 3  
Section 1 of Am. S.B. 200 of the 98th General 4  
Assembly, and Section 3 of H.B. 69 of the 112th 5  
General Assembly to create procedures for 6  
railway boards of trustees created under the 7  
Ferguson Act of 1869 to sell a railroad or a 8  
portion of a railroad and create and administer 9  
a trust fund with the proceeds of the sale. 10

**BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:**

**Section 1.** That sections 746.01, 746.02, 746.03, 746.04, 11  
746.05, 746.06, and 746.07 of the Revised Code be enacted to 12  
read as follows: 13

**Sec. 746.01.** As used in this chapter: 14

"Ferguson Act of 1869" means the act titled "An act 15  
relating to cities of the first class having a population 16  
exceeding one hundred and fifty thousand inhabitants" passed May 17  
4, 1869, (66 O. L. p. 80) pursuant to which the city of 18  
Cincinnati established the Cincinnati Southern Railway, as well 19

as acts subsequently amending the act passed May 4, 1869, which 20  
included sections 15093 to 15150-20 of the General Code, as 21  
subsequently amended by Section 2 of S.B. 200 of the 98th 22  
general assembly, Section 1 of H.B. 314 of the 102nd general 23  
assembly, Section 1 of S.B. 562 of the 104th general assembly, 24  
and Sections 1 and 2 of H.B. 69 of the 112th general assembly. 25

"Railway" means any railroad built under and governed by 26  
the Ferguson Act of 1869, and does not include property, land, 27  
right-of-way, or easements which are a part of the railroad line 28  
but are no longer necessary for the operation of the railroad, 29  
as determined by the railway board of trustees. 30

"Railway board of trustees" means a board of trustees 31  
established by a municipal corporation pursuant to H.B. 69 of 32  
the 112th general assembly as successor to a board of trustees 33  
that was established by the Ferguson Act of 1869. 34

**Sec. 746.02.** (A) (1) A railway board of trustees may 35  
solicit or receive offers for, and sell, all or any portion of a 36  
railway in accordance with the provisions of this chapter. The 37  
board of trustees may approve and enter into a sale agreement by 38  
adopting a resolution that shall include the terms of the 39  
proposed sale, and the method that will be used to determine the 40  
minimum annual amount to be transmitted to the municipal 41  
corporation under section 746.05 of the Revised Code, which may 42  
only be amended upon consultation with the fiscal officer of the 43  
municipal corporation, and which shall result in an annual 44  
amount equal to or greater than the minimum approved by the 45  
electors under this section. 46

(2) After the railway board of trustees has adopted the 47  
resolution described in division (A) (1) of this section, the 48  
railway board of trustees may adopt a resolution setting the 49

date of the election in which the question of approval of the 50  
sale is to be submitted to the electors of the municipal 51  
corporation, along with the applicable ballot language as 52  
described in division (D) of this section. 53

The board of trustees shall only sell a railway or portion 54  
of a railway upon approval by the electors of the municipal 55  
corporation, as described in divisions (B), (C), (D), and (E) of 56  
this section. 57

(B)(1) The railway board of trustees, upon adopting a 58  
resolution under division (A)(2) of this section, shall certify 59  
the resolution to the legislative authority of the municipal 60  
corporation and to the fiscal officer of the municipal 61  
corporation. The legislative authority of the municipal 62  
corporation, upon receiving a copy of the resolution, shall 63  
certify the resolution to the board of elections not less than 64  
ninety days before the date of the election specified in the 65  
resolution. 66

(2) The board of elections shall submit the proposed 67  
resolution for the approval or rejection of the electors of the 68  
municipal corporation at the election specified in the 69  
resolution. 70

(C)(1) The legislative authority of the municipal 71  
corporation shall cause a notice of an election under this 72  
section to be published in a newspaper of general circulation 73  
within the municipal corporation for the two consecutive weeks 74  
before the election, or as provided in section 7.16 of the 75  
Revised Code. 76

(2) If the board of elections maintains a web site, the 77  
board of elections shall post notice of the election on its web 78

site not later than thirty days before the election. 79

(3) A notice published under this section shall state the 80  
time and place of the election and shall include a description 81  
of the railway or portion of the railway to be sold, the name of 82  
the proposed purchaser, the purchase price to be paid, including 83  
the amount and due date of any installments of the purchase 84  
price, the purposes for which the proceeds of the sale may be 85  
used, and the initial minimum annual amount payable to the 86  
municipal corporation, as described in section 746.05 of the 87  
Revised Code. 88

(D) The ballot for an election under this section shall 89  
include the following language, as applicable: 90

"Shall the \_\_\_\_\_ (name of railway board of trustees) be 91  
authorized to sell \_\_\_\_\_ (name and description of railway or 92  
portion of railway being sold) to \_\_\_\_\_ (name of the proposed 93  
buyer) for a purchase price of \_\_\_\_\_ (amount proposed for the 94  
sale), to be paid in \_\_\_\_\_ (number of installments) installments 95  
during the years \_\_\_\_\_ (years in which an installment will be 96  
paid), with the moneys received to be deposited into a trust 97  
fund operated by \_\_\_\_\_ (railway board of trustees), with 98  
\_\_\_\_\_ (municipal corporation) as the sole beneficiary, the 99  
moneys to be annually disbursed to the municipal corporation in 100  
an amount no less than \_\_\_\_\_ (dollar amount) per year, for the 101  
purpose of the rehabilitation, modernization, or replacement of 102  
existing streets, bridges, municipal buildings, parks and green 103  
spaces, site improvements, recreation facilities, improvements 104  
for 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. 120

**Sec. 746.03.** (A) A railway board of trustees that sells a 121  
railway or any portion of a railway under section 746.02 of the 122  
Revised Code shall establish a railway proceeds trust fund for 123  
the purpose of receiving the net proceeds of the sale. The 124  
municipal corporation that owned the railway or portion of the 125  
railway before the sale shall be the sole beneficiary of the 126  
trust fund. Any funds in the trust fund shall not be considered 127  
part of the unencumbered balance or revenue of the subdivision 128  
under section 5705.35 or 5705.36 of the Revised Code. 129

(B) The railway board of trustees shall manage and 130  
administer the railway proceeds trust fund established under 131  
division (A) of this section as trustees, in accordance with 132  
this chapter and with ordinances passed by the legislative 133  
authority of the municipal corporation not in conflict with this 134  
chapter. 135

(C) Notwithstanding section 9.481 of the Revised Code, no 136  
individual may be appointed to the railway board of trustees 137

after the effective date of this section unless the individual 138  
is a resident of the municipal corporation. 139

**Sec. 746.04.** (A) A railway board of trustees that 140  
establishes a trust fund under section 746.03 of the Revised 141  
Code may invest and reinvest the moneys and assets held in the 142  
trust fund, subject to this chapter. The railway board of 143  
trustees shall invest and reinvest under the prudent investor 144  
standard of care, as described in section 5809.02 of the Revised 145  
Code. 146

(B) The railway board of trustees shall retain at least 147  
one independent financial advisor to assist the railway board of 148  
trustees in investing the trust fund. The railway board of 149  
trustees may retain managers, administrative staff, agents, 150  
attorneys, and employees, and engage advisors, as are 151  
appropriate and reasonable in relation to the assets of the 152  
trust fund, the purposes of the trust, and the skills and 153  
knowledge of the members of the railway board of trustees, in 154  
order to fulfill the board's duties and responsibilities in 155  
administering the trust fund. The railway board of trustees 156  
shall provide for payment of these and other reasonable expenses 157  
of administering the trust fund from the investment earnings on 158  
the trust fund. 159

(C) The railway board of trustees shall adopt management 160  
and investment policies containing objectives and criteria 161  
designed to ensure the trust fund is administered efficiently 162  
and self-sustaining, and that the money and assets in the trust 163  
fund are not diminished while providing the municipal 164  
corporation payments pursuant to section 746.05 of the Revised 165  
Code. These policies shall address asset allocation targets and 166  
ranges, risk factors, asset class benchmarks, eligible 167

investments, time horizons, total return objectives, a strategy 168  
for long-term growth of the principal of the trust fund, 169  
competitive procurement processes, fees and administrative 170  
expenses, and performance evaluation guidelines. 171

The management and investment policies, and any amendments 172  
to those policies, shall be adopted after consultation with the 173  
fiscal officer of the municipal corporation. 174

The railway board of trustees shall make public any 175  
management and investment policies it adopts under this section. 176

(D) The railway board of trustees, following the creation 177  
of a trust fund under this chapter, shall report to the fiscal 178  
officer of the municipal corporation, each calendar year, the 179  
fiscal transactions of the trust fund for the calendar year, the 180  
amounts of accumulated moneys and securities, and the most 181  
recent balance sheet showing the financial condition of the fund 182  
by means of audited financial statements. The reports shall be 183  
delivered at such times, and shall be in a form and content, as 184  
reasonably requested by the fiscal officer of the municipal 185  
corporation. 186

(E) Except as otherwise provided in this chapter, no 187  
member of the railway board of trustees shall have any direct or 188  
indirect interest in the gains or profits of any investment made 189  
by the railway board of trustees. No member or person connected 190  
with the railway board of trustees directly or indirectly, for 191  
self or as an agent or partner of others, shall borrow any of 192  
the funds or deposits of the railway board of trustees or trust 193  
fund, or in any manner use the same except to make such current 194  
and necessary payments as are authorized by the railway board of 195  
trustees. No member or agent of the railway board of trustees 196  
shall become an indorser or surety or become in any manner an 197

obligor for moneys loaned by or borrowed from the railway board 198  
of trustees. 199

(F) The railway board of trustees, and the management and 200  
investment of the trust fund, is not subject to Chapter 135., 201  
sections 731.56 to 731.59, or any other conflicting provisions 202  
of the Revised Code. 203

Sec. 746.05. Not later than the thirtieth day of September 204  
of each year, the railway board of trustees shall certify to the 205  
municipal corporation the amount of funds that the railway board 206  
of trustees will disburse to the municipal corporation over the 207  
course of the municipal corporation's immediately following 208  
fiscal year. During the municipal corporation's immediately 209  
following fiscal year, and with such frequency and in such 210  
installments as may be determined by the railway board of 211  
trustees after consultation with the fiscal officer of the 212  
municipal corporation, the railway board of trustees shall 213  
transmit to the municipal corporation the certified amount. 214

The railway board of trustees shall determine the amount 215  
transferred pursuant to this section, which shall be not less 216  
than the amount approved by the electors as provided in section 217  
746.02 of the Revised Code, increased each year in the manner 218  
set forth in the methodology approved pursuant to that section. 219  
Amounts transferred pursuant to this section shall be paid from 220  
investment earnings of the trust fund after payments of expenses 221  
incurred under section 746.04 of the Revised Code. If there are 222  
not sufficient investment earnings in a year to pay the amount 223  
certified pursuant to this section, the railway board of 224  
trustees shall remit the remainder of the certified amount to 225  
the municipal corporation from the principal amount of the trust 226  
fund. 227



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| <u>Sec. 746.06. (A) As used in this section:</u>                        | 228 |
| <u>"Debt service" means the principal, interest, and</u>                | 229 |
| <u>redemption premium payments, and any deposits pertaining</u>         | 230 |
| <u>thereto, required with respect to bonds.</u>                         | 231 |
| <u>"Existing infrastructure improvements" means streets,</u>            | 232 |
| <u>bridges, municipal buildings, parks and green space, site</u>        | 233 |
| <u>improvements, recreation facilities, improvements for parking</u>    | 234 |
| <u>purposes, and any other public facilities that are owned by a</u>    | 235 |
| <u>municipal corporation with a useful life of five or more years.</u>  | 236 |
| <u>"Existing infrastructure improvements" does not include the</u>      | 237 |
| <u>construction of new infrastructure improvements.</u>                 | 238 |
| <u>(B) A municipal corporation that receives disbursements</u>          | 239 |
| <u>under section 746.05 of the Revised Code shall deposit the</u>       | 240 |
| <u>moneys received into a fund designated by the fiscal officer of</u>  | 241 |
| <u>the municipal corporation. The municipal corporation shall spend</u> | 242 |
| <u>the funds received solely on the rehabilitation, modernization,</u>  | 243 |
| <u>or replacement of existing infrastructure improvements. The</u>      | 244 |
| <u>municipal corporation shall not use the funds received for</u>       | 245 |
| <u>payment of debt service or for the construction of new</u>           | 246 |
| <u>infrastructure improvements.</u>                                     | 247 |
| <u>Sec. 746.07. All net earnings and income from the lease of</u>       | 248 |
| <u>a railway established under the Ferguson Act of 1869 shall be</u>    | 249 |
| <u>paid into the treasury of the municipal corporation that</u>         | 250 |
| <u>established the railway, to the credit of the sinking fund or</u>    | 251 |
| <u>bond retirement fund.</u>                                            | 252 |
| <b>Section 2.</b> That Section 15149 of the General Code, Section       | 253 |
| 1 of Am. S.B. 200 of the 98th General Assembly, and Section 3 of        | 254 |
| H.B. 69 of the 112th General Assembly are hereby repealed.              | 255 |
| <b>Section 3.</b> Any proceedings pending or in progress on the         | 256 |

effective date of Section 1 of this act are deemed to have been 257  
taken in conformity with that section. 258