



OHIO LEGISLATIVE SERVICE COMMISSION

Bill Analysis

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S.B. 210

132nd General Assembly
(As Introduced)

Sens. Coley, Eklund

BILL SUMMARY

- Prohibits a municipal corporation from imposing a tax, fee, assessment, or other charge on auxiliary containers (for example, a plastic or paper bag), the sale, use, or consumption of auxiliary containers, or on the basis of receipts received from the sale of auxiliary containers.
 - Authorizes a person to use an auxiliary container for purposes of commerce or otherwise.
 - Clarifies that existing law prohibiting the improper deposit of litter applies to auxiliary containers under the state anti-littering law.
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CONTENT AND OPERATION

Auxiliary containers

The bill does all of the following with respect to auxiliary containers:

(1) Prohibits a municipal corporation from imposing a tax, fee, assessment, or other charge on auxiliary containers, the sale, use, or consumption of such containers, or on the basis of receipts received from the sale of such containers (see **COMMENT**);¹

(2) Authorizes a person to use an auxiliary container for purposes of commerce or otherwise. The bill specifies that nothing in this authorization may be construed to

¹ R.C. 715.013(B).

prohibit the authority of a county, municipal corporation, or solid waste management district to implement a voluntary recycling program.²

(3) Clarifies that existing law prohibiting the improper deposit of litter applies to auxiliary containers under the state anti-littering law. Current law prohibits a person from improperly depositing litter on public property, private property not owned by the person, or in or on waters of the state. Violation of the prohibition is a third degree misdemeanor, and a sentencing court may require the violator to remove litter from property or from the waters of the state.³

What is an auxiliary container?

For purposes of the bill, an auxiliary container is a bag, can, cup, food service item, container, keg, bottle, or other packaging to which all of the following apply:

(1) It is designed to be either single use or reusable;

(2) It is made of cloth, paper, plastic, foamed or expanded plastic, cardboard, corrugated material, aluminum, metal, glass, postconsumer recycled material, or similar materials or substances, including coated, laminated, or multilayered substrates; and

(3) It is designed for consuming, transporting, or protecting merchandise, food, or beverages from or at a food service operation, retail food establishment, grocery, or any other type of retail, manufacturing, or distribution establishment.⁴

COMMENT

The bill prohibits a municipal corporation from imposing a tax, fee, assessment, or other charge on auxiliary containers, the sale, use, or consumption of such containers, or on the basis of receipts received from the sale of such containers.⁵ Article XIII, section 6 and Article XVIII, section 13 of the Ohio Constitution explicitly allow the General Assembly to limit the power of municipalities to levy taxes and assessments. However, it is unclear if those constitutional provisions authorize the General Assembly to limit "fees and other charges" imposed by a municipal corporation.

² R.C. 3736.021.

³ R.C. 3736.32 and 3767.99, not in the bill.

⁴ R.C. 3736.01(K).

⁵ R.C. 715.013(B).

Because the bill restricts municipal authority to impose fees and charges, it may interfere with a municipal corporation's home rule authority under Article XVIII, Section 3 of the Ohio Constitution, which provides that:

Municipalities shall have the authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary, and other similar regulations, as are not in conflict with general laws.

Accordingly, a statute enacted by the General Assembly that purports to limit that constitutional authority may be invalid as applied to municipal corporations. *See Canton v. State*, 95 Ohio St.3d 149, 2002-Ohio-2005.

HISTORY

| ACTION | DATE |
|------------|----------|
| Introduced | 10-03-17 |

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