



**Sub. H.B. 323**

125th General Assembly  
(As Passed by the General Assembly)

**Reps. Hoops, Wolpert, Daniels, Chandler, Cirelli, Collier, Domenick, C. Evans, Fessler, Flowers, Martin, McGregor, Olman, Price, Schlichter, Sferra, Skindell, Ujvagi, Wagner, Walcher, Allen, Aslanides, Barrett, Brown, Buehrer, Calvert, Carano, Carmichael, Combs, DeBose, DeGeeter, D. Evans, Gibbs, Gilb, Hagan, Hartnett, Harwood, Hughes, Jerse, Key, Latta, Miller, Niehaus, Otterman, S. Patton, T. Patton, Perry, Peterson, Reidelbach, Schmidt, Seaver, Seitz, Setzer, D. Stewart, Strahorn, Taylor, Webster, Widener, Wilson, Woodard**

**Sens. Robert Gardner, Mumper, Zurz, Roberts, Harris, Schuler**

**Effective date: \***

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**ACT SUMMARY**

- Allows counties and townships to donate certain personal property, and school districts to donate certain real or personal property, to eligible "501(c)(3)" nonprofit organizations.
- Authorizes the conveyance of certain state-owned real estate in Columbiana County to the East Liverpool YMCA.
- Authorizes the conveyance of certain state-owned real estate in Wood County to a purchaser.

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*\* The Legislative Service Commission had not received formal notification of the effective date at the time this analysis was prepared. Additionally, the analysis may not reflect action taken by the Governor.*

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## CONTENT AND OPERATION

### *Donations of certain property to "501(c)(3)" nonprofit organizations*

#### *Background law*

**Counties.** Under continuing law, if a board of county commissioners finds that the county has personal property that is not needed for public use, is obsolete, or is unfit for the use for which it was acquired, the board may sell or donate it to the federal or state government or any political subdivision of this state, without advertisement or public notification (sec. 307.12(D)). Otherwise, under continuing law, the board may dispose of the property in specified ways that generally depend on its estimated fair market value.<sup>1</sup> Depending on that fair market value, the property may have to be offered for sale at a public auction or by sealed bid to the highest bidder following certain public notification. If the property's estimated fair market value is \$2,500 or less, however, it may be sold as the board sees fit, including by a private sale without advertisement or public notification. And, motor vehicles valued between \$2,500 and \$4,500 may be donated by the board to certain "501(c)(3)" nonprofit organizations for the transportation needs of participants in specified programs. (Sec. 307.12(A) and (B).)

**Townships.** Under continuing law, townships, too, can dispose of personal property that is not needed for public use, is obsolete, or is unfit for the use for which it was acquired. Under that continuing law, a board of township trustees may dispose of such personal property generally as follows (sec. 505.10(A)):

(1) If the property's estimated fair market value is in excess of \$2,500, by a sale at a public auction or by sealed bid to the highest bidder--following specified published and posted public notification. If there is to be a sale by sealed bid, the board may reject all bids and hold another sale by public auction or sealed bid.

(2) If the property's fair market value is \$2,500 or less, by a private sale without advertisement or public notification.

**Both of these political subdivisions.** Under continuing law, in both counties and townships, in selling unneeded, unfit-for-use, or obsolete motor vehicles, road machinery, equipment, or tools, the relevant board may offer to credit the sale price against the purchase price of other vehicles, machinery, equipment, or tools. In addition, the relevant board may discard or salvage *any*

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<sup>1</sup> *The thresholds in the statute generally are property with an estimated fair market value in excess of \$2,500 and property with an estimated fair market value of \$2,500 or less.*

unneded, unfit-for-use, or obsolete county or township personal property if it is valueless. Moreover, counties and townships may sell *any* unneded, unfit-for-use, or obsolete personal property by Internet auction, regardless of its estimated fair market value. (Secs. 307.12 (E), (G), (H), and (I) and 505.10(A)(3), (4), and (7) and (D).)

**School districts.** Under continuing law, school districts, through their boards of education, generally may dispose of personal property that exceeds \$10,000 in value by a sale at public auction following certain public notification. But, if such property does not sell after at least one public auction, it may be sold at a private sale. Certain governmental entities or officials, however, may enter into an agreement, upon such terms as are agreed upon, to purchase such property from a school district, and "trades" of personal property may be agreed upon by school districts and other parties. (Sec. 3313.41(A) to (D).)

### **Changes made by the act**

**In general.** In addition to the continuing methods described above for disposing of unneded, unfit-for-use, or obsolete *personal property*, the act authorizes counties and townships to dispose of that property, if it has an *estimated fair market value of \$2,500 or less*, by donating it to a "501(c)(3)" nonprofit organization that is exempt from income taxation under federal law and that is located in Ohio. (See **COMMENT 1.**) A county or township can make such a donation only after adopting a resolution creating a program for these donation purposes. (Secs. 307.12(B)(2) and 505.10(A)(2)(b).)

The act also authorizes school districts, through their boards of education, to donate to "501(c)(3)" nonprofit organizations that are tax exempt from income taxation under federal law and located in Ohio *property* the board finds, by resolution, is not needed for school district use, is obsolete, or is unfit for the use for which it was acquired. This property too must have an estimated fair market value of *\$2,500 or less* and apparently may be *real* or *personal* property. The procedures for school districts in this regard generally are the same as for counties and townships as discussed below. (Sec. 3313.41(H).)

**Resolution creating the program.** To create a donation program for unneded, unfit-for-use, or obsolete personal property valued at \$2,500 or less or, in the case of a school district, real property so valued, a board of county commissioners, a board of township trustees, or a school district board of education must adopt a resolution that contains the following (secs. 307.12(B)(2), 505.10(A)(2)(b), and 3313.41(H)):

(1) A statement of its intention to make the property available to the above-described 501(c)(3) nonprofit organizations;



(2) Guidelines and procedures necessary to implement the program;

(3) An indication of whether the program will be conducted by the county, township, or school district, or by a representative under contract with the county, township, or school district;

(4) If such a representative is known when the resolution is adopted, contact information for that representative;

(5) A requirement that any nonprofit organization desiring to obtain donated property submit a *written notice* to the relevant board or its representative that includes evidence that it is a 501(c)(3) nonprofit organization that is exempt from income taxation under federal law and that is located in Ohio, a description of its primary purpose, a description of the types of property it needs, and contact information for its designated program agent. (See **COMMENT 2**.)

**Posted notices.** Once the donation program resolution is adopted, the relevant board must publish at least twice in a newspaper of general circulation notice of its intent to donate unneeded, unfit-for-use, or obsolete property to 501(c)(3) organizations; the notice must summarize the resolution's contents. A similar notice must be posted continually at the offices of the county auditor and the board of county commissioners, for a county, and the office of the board of township trustees, for a township. In the case of a school district, the continual notice must be posted in the board of education's office. And, if the county, township, or school district maintains an Internet web site, the notice also must be posted continually on that web site. (Secs. 307.12(B)(2), 505.10(A)(2)(b), and 3313.41(H).)

**Lists.** The relevant board or its donation program representative must maintain (1) a list of all eligible 501(c)(3) organizations that submit a written notice as described above and (2) a list of all personal property, or, in the case of a school district, real or personal property, that qualifies for the program. The list of qualifying property must be continually posted at the same locations at which the resolution creating the program must be posted (see above). (Secs. 307.12(B)(2), 505.10(A)(2)(b), and 3313.41(H).)

A board may include in a separate and distinct resolution a list of eligible 501(c)(3) organizations that are to be given priority for an item's donation. The list must specify the reasons for giving the organizations this priority. The board may choose to give priority based on a direct relationship between the purposes of a 501(c)(3) organization and specific public or school district purposes of county, township, or board of education programs. (Secs. 307.12(B)(2), 505.10(A)(2)(b), and 3313.41(H).) (See **COMMENT 2**.)

**Donation priority--in general.** An item of property on the property list mentioned in (2) above must be donated to the 501(c)(3) organization on the eligible organization list mentioned in (1) above that first declares its desire to obtain the item, unless the program includes a list of eligible 501(c)(3) organizations that are to be given priority for a particular item as explained above (secs. 307.12(B)(2), 505.10(A)(2)(b), and 3313.41(H)).

**Ethics issues.** A board of county commissioners, board of township trustees, or school district board of education must consult with the Ohio Ethics Commission, and must comply with the Ethics Law and the Criminal Code's Offenses against Justice and Public Administration Law, when donating under the act's provisions to a 501(c)(3) organization of which a board member, any family member of a board member, or any business associate of a board member is a trustee, officer, board member, or employee (secs. 307.12(C), 505.10(C), and 3313.41(H)).<sup>2</sup>

### **Land conveyances**

#### **Conveyance to the East Liverpool Young Men's Christian Association**

The act authorizes the Governor to execute a deed in the name of the state conveying to the East Liverpool Young Men's Christian Association (YMCA), and its successors and assigns, all of the state's right, title, and interest in certain state-owned real estate located in East Liverpool, Columbiana County and described in the act (Section 3(A)). Consideration for the conveyance to the East Liverpool YMCA is the conveyance by it to the state of certain real estate located in East Liverpool and described in the act or other similar real estate acceptable to Kent State University (Section 3(B)).

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<sup>2</sup> *The act's "ethics issues" provisions, insofar as they relate to a county or township, also extend to any sale under continuing law of personal property with an estimated fair market value of \$2,500 or less by a board of township trustees or a board of county commissioners to any nonprofit organization of which a board member, a family member of a board member, or a business associate of a board member is a trustee, officer, board member, or employee. The provisions further extend to sales by boards of county commissioners of unneeded, unfit-for-use, or obsolete personal property with an estimated fair market value in excess of \$2,500 to any nonprofit organization.*

*Also, under continuing law, a board of county commissioners may donate any motor vehicle that does not exceed \$4,500 in value to a 501(c)(3) organization for the purpose of meeting the transportation needs of Ohio Works First Program participants or Prevention, Retention, and Contingency Program participants. These donations too are covered by the act's county-related "ethics issues" provisions.*

Kent State University and the East Liverpool YMCA must pay the costs of the conveyances mentioned above (Section 3(C)). And, the act provides that the real estate conveyed to the state by the East Liverpool YMCA must be for the use and benefit of Kent State University (Section 3(D)).

The act specifies the procedures for the preparation, execution, and recording of a deed to the real estate to be conveyed by the state to the East Liverpool YMCA upon the conveyance by it to the state of the "consideration" real estate (Section 3(E)). These conveyance provisions expire one year after the act's effective date (Section 3(F)).

### **Conveyance to a purchaser**

The act authorizes the Governor to execute a deed in the name of the state conveying to the purchaser, and the purchaser's heirs and assigns or successors and assigns, all of the state's right, title, and interest in certain real estate located in Bowling Green, Wood County and described in the act (Section 4(A)). Consideration for the conveyance is a purchase price that is acceptable to the Board of Trustees of Bowling Green State University (BGSU) following a survey by a licensed surveyor, if necessary, and an appraisal by one or more disinterested persons (Section 4(B)).

The act specifies the procedures for the preparation, execution, and recording of a deed to the real estate upon the payment of the purchase price (Section 4(C)). The BGSU Board of Trustees must pay advertising costs, appraisal fees, and all other costs of the real estate's sale unless otherwise specified in the contract of sale (Section 4(D)). The net proceeds of the sale must be paid to BGSU and deposited in University accounts for purposes determined by the Board of Trustees (Section 4(E)).

These land conveyance provisions expire five years after the act's effective date (Section 4(F)).

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## **COMMENT**

1. Under the act, a nonprofit organization must be tax exempt under subsection 501(a) and be described in subsection 501(c)(3) of the Internal Revenue Code. Subsection 501(c)(3) concerns corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition, or for the prevention of cruelty to children or animals. No part of the net earnings of these entities may inure to the benefit of any private shareholder or individual; no substantial part of their activities generally may be carrying on propaganda or otherwise attempting

to influence legislation; and participating in or intervening in political campaigns on behalf of or in opposition to any candidate for public office by them is prohibited.

2. Continuing law *for counties* does not require prior written notice for donations to specified 501(c)(3) organizations of motor vehicles with an estimated fair market value of more than \$2,500 but not more than \$4,500 (sec. 307.12(A)(2)), but the act's donee prior written notice requirement will apply to those donees for the same type of property with a lower estimated fair market value. Also, although the act's provisions authorize counties to designate priority allocations for lower valued property, continuing law establishes a donation priority for certain 501(c)(3) organizations for motor vehicles with a higher estimated fair market value (sec. 307.12(A)(2)).

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## HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	11-06-03	p. 1153
Reported, H. County & Township Government	01-21-04	pp. 1502-1503
Passed House (97-0)	01-28-04	pp. 1583-1584
Reported, S. State & Local Gov't & Veterans Affairs	05-12-04	p. 1892
Passed Senate (32-0)	05-18-04	pp. 1924-1962
House concurred in Senate amendments (99-0)	05-25-04	pp. 1954-1955

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