



Sub. H.B. 323

125th General Assembly
(As Passed by the House)

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

BILL SUMMARY

- Allows counties and townships to donate certain personal property to eligible "501(c)(3)" nonprofit organizations.

CONTENT AND OPERATION

Current law

Currently, if a board of county commissioners finds that the county has personal property that is not needed for public use, is obsolete, or is unfit for the use for which it was acquired, the board may sell or donate it to the federal or state government or any political subdivision of this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(B)). Otherwise, the board may dispose of the property in specified ways that generally depend on its estimated fair market value.¹ 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

¹ *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.*

organizations for the transportation needs of participants in specified programs. (Sec. 307.12(A) and (B).)

Townships, too, can dispose of personal property that is not needed for public use, is obsolete, or is unfit for the use for which it was acquired.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 Township Law, the 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.

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 unneeded, unfit-for-use, or obsolete county or township personal property if it is valueless. Moreover, counties and townships may sell any such personal property by Internet auction, regardless of its estimated fair market value. (Secs. 307.12(C), (E), (F), and (G) and 505.10(A) and (C).)

Changes proposed by the bill

In general

In addition to the methods described above for disposing of unneeded, unfit-for-use, or obsolete personal property, the bill 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).)

Resolution creating the program

To create a donation program for unneeded unfit-for-use, or obsolete personal property valued at \$2,500 or less, a board of county commissioners or a board of township trustees must adopt a resolution that contains the following (secs. 307.12(B)(2) and 505.10(A)(2)(b)):

(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 or township, or by a representative under contract with the county or township;

(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 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. If the county or township maintains an Internet web site, the notice also must be posted continually on that web site. (Secs. 307.12(B)(2) and 505.10(A)(2)(b).)

Lists

A 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 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) and 505.10(A)(2)(b).)

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 purposes of county or township programs. (Secs. 307.12(B)(2) and 505.10(A)(2)(b).) (See **COMMENT 2**.)

Donation priority--in general

An item of property on the personal property list must be donated to the 501(c)(3) organization on the eligible organization list 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 based on a direct relationship as explained above (secs. 307.12(B)(2) and 505.10(A)(2)(b)).

Ethics issues

A board of county commissioners or board of township trustees 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 bill'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) and 505.10(C)).²

COMMENT

1. Under the bill, 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

² *The bill's "ethics issues" provisions 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 bill's "ethics issues" provisions.

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. Existing 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 bill'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 bill's provisions authorize counties to designate priority allocations for lower valued property, existing 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)).

HISTORY

| ACTION | DATE | JOURNAL ENTRY |
|--|----------|---------------|
| Introduced | 11-06-03 | p. 1053 |
| Reported, H. County & Township Government | 01-21-04 | pp. 1502-1503 |
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