



Pamela Goshay

*Final Analysis*  
*Legislative Service Commission*

**Am. Sub. S.B. 147**  
126th General Assembly  
(As Passed by the General Assembly)

**Sens. Austria, Schuring, Armbruster, Grendell, Schuler**

**Reps. Wolpert, Bubp, Combs, Daniels, Uecker, Hagan, Kearns, Oelslager**

**Effective date: Emergency, August 16, 2005; Sections 1, 2, 3, 4, 5, and 6 effective November 15, 2005**

---

**ACT SUMMARY**

- Authorizes the conveyance of specified state-owned real estate in Stark County to the city of Massillon, in Warren County to Cincinnati Gas and Electric Company, in Brown County to a purchaser to be determined, in Franklin County to the Columbus Board of Education, and in Clark County to a purchaser to be determined.
- Authorizes the Greene County Prosecuting Attorney to prosecute state law violation cases arising in specified townships within the jurisdiction of the Fairborn and Xenia municipal courts.
- Permits the alternative use at each polling location (instead of a DRE voting machine) of at least one "marking device" that is accessible for individuals with disabilities and provides those individuals the same opportunity for access and participation as other voters.

---

**CONTENT AND OPERATION**

**Land conveyances**

**Stark County conveyance**

The act authorizes the Governor to execute a deed in the name of the state conveying to the city of Massillon, and its successors and assigns, all of the state's right, title, and interest in specified state-owned real estate in Stark County (Section 3(A)).

The consideration for the conveyance is the purchase price of \$579,000. The purchase price must be paid to the state according to the following schedule as derived by mutual agreement between the state and the city of Massillon through an executed Offer to Purchase (Section 3(B)):

\$300,000 at closing and transfer of title.

\$69,750 due and payable on December 1, 2005.

\$69,750 due and payable on December 1, 2006.

\$69,750 due and payable on December 1, 2007.

\$69,750 due and payable on December 1, 2008.

The real estate must be sold as an entire tract and not in parcels, and, prior to the execution of the Governor's deed, possession of the real estate must be governed by an existing interim lease between the Department of Administrative Services (DAS) and the city of Massillon (Section 3(C) and (D)).

The conveyance of the real estate is subject to the following *conditions and restrictions* (Section 3(E)):

(1) The city of Massillon must receive written approval from the Department of Mental Health to use or develop the real estate for any purpose other than a municipal park, a municipal office space, or an educational or recreational use.

(2) The city of Massillon covenants that, during any period that any bonds issued by the state to finance or refinance all or any portion of the real estate are outstanding, no portion of the real estate will be used for a private business use without the state's prior written consent.

(3) The city of Massillon must not sell, convey, or transfer ownership of the real estate before January 1, 2010, or before receiving written confirmation from the state that all of its bonded capital indebtedness associated with any of the buildings located on the real estate has been fully retired.

(4) The city of Massillon agrees to execute at or before the execution of the Governor's deed ingress/egress easements prepared by DAS to permit continued use of existing driveways along the eastern boundary of the real estate and to permit secondary access from adjacent state-owned property to Nave Road, a public, dedicated street.

The act specifies the procedures for the preparation, execution, and recording of a deed to the real estate upon the payment of \$300,000 of the purchase price, and the city of Massillon must pay the costs of the conveyance (Section 3(F) and (G)).

The provisions of the act relating to the Stark County land conveyance expire one year after their effective date (Section 3(H)).

### **Warren County conveyance**

The act authorizes the Governor to execute a deed in the name of the state conveying to Cincinnati Gas and Electric Company ("the Company"), and its successors and assigns, all of the state's right, title, and interest in specified state-owned real estate in Warren County (Section 4(A)). The consideration for the conveyance is the purchase price of \$70,000 (Section 4(B)).

Prior to the execution of the Governor's deed, possession of the real estate must be governed by an existing interim lease between DAS and the Company (Section 4(C)). And, the conveyance of the real estate is subject to the following *conditions, restrictions, and possibility of reverter* (Section 4(D)):

(1) The Company must construct and operate an electrical substation on the real estate within five years after the execution of the Governor's deed, and, if that construction is not completed within that five-year period, all right, title, and interest in the real estate must revert to the state, for the use and benefit of the Department of Rehabilitation and Correction (DRC), without the need for further action by the state.

(2) If the Company ceases to use the real estate for substation purposes or if it conveys or transfers the real estate to any non-utility owner, the Company must pay \$200,000 to DRC, provided that the state has continuously owned and maintained an uninterrupted property interest in real estate contiguous to that conveyed under the act at the time of the subsequent conveyance or transfer.

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, and the Company must pay the costs of the conveyance. The net proceeds of the sale must be deposited in the state treasury to the credit of Department of Rehabilitation and Correction Fund 148 Services and Agricultural Fund (Appropriation Item 501-602) and used to offset the loss of DRC's agricultural croplands. (Section 4(E), (F), and (G).)

The provisions of the act relating to the Warren County land conveyance expire one year after their effective date (Section 4(H)).



### **Brown County conveyance**

The act authorizes the Governor to execute a deed in the name of the state conveying to a purchaser, and the purchasers' heirs and assigns or successors and assigns, all of the state's right, title, and interest in specified state-owned real estate in Brown County (Section 5(A)). The consideration for the conveyance is a purchase price acceptable to the State Library of Ohio, following an appraisal by one or more disinterested persons (Section 5(B)).

The act specifies the procedures for the preparation, execution, and recording of a deed to the real estate upon payment of the purchase price. Advertising costs, appraisal fees, and all other costs of the sale of the real estate must be paid by the purchaser. (Section 5(C) and (D).)

The provisions of the act relating to the Brown County land conveyance expire three years after their effective date (Section 5(E)).

### **Franklin County conveyance**

The act authorizes the Governor to execute a deed in the name of the state conveying to the Columbus Board of Education, and its successors and assigns, all of the state's right, title, and interest in specified state-owned real estate in Franklin County (Section 6(A)).

The consideration for the conveyance is the purchase price of \$2,200,000. And, prior to the execution of the Governor's deed, possession of the real estate must be governed by an existing lease between DAS and Franklin County. (Section 6(B) and (C).)

The act specifies the procedures for the preparation, execution, and recording of a deed to the real estate upon payment of the purchase price, and the Columbus Board of Education must pay the costs of the conveyance (Section 6(D) and (E)).

The provisions of the act relating to the Franklin County land conveyance expire three years after their effective date (Section 6(F)).

### **Clark County conveyance**

The act authorizes the Governor to execute a deed in the name of the state conveying to a purchaser, and the purchaser's heirs and assigns or successors and assigns, all of the state's right, title, and interest in specified state-owned real estate in Clark County (Section 7(A)).



The act requires the Department of Mental Retardation and Developmental Disabilities (DMRDD) to appraise the real estate or have it appraised by one or more disinterested persons for a fee to be determined by DMRDD (Section 7(B)). The Director of Administrative Services must offer the real estate for sale as follows (Section 7(C)):

- The Director must review the appraisal, establish an appraised value for the real estate, and provide notice to DMRDD of any interest expressed by any *state entity* in acquiring the real estate at the appraised value. The Director must first offer the real estate at the appraised value to any state entity that has expressed an interest in acquiring it.
- If no state entity expresses an interest in acquiring the real estate at the appraised value, or if a state entity accepts the offer to purchase the real estate at the appraised value but fails to timely complete the purchase, the Director must offer the real estate to the *Board of County Commissioners of Clark County* at a purchase price agreed upon by the Director and the Board of County Commissioners.

The real estate must be sold as an entire parcel and not subdivided. And, the advertising costs, appraisal fees, and other costs of the sale must be paid by DMRDD (Section 7(D) and (E)).

The act specifies the procedures for the preparation, execution, and recording of a deed to the real estate upon notification from the Director of Administrative Services that it has been sold (Section 7(F)). The net proceeds of the sale must be deposited in the state treasury to the credit of the Mental Health Facilities Improvement Fund and used to offset bond indebtedness for Springview Developmental Center capital projects (Section 7(G)).

The provisions of the act relating to the Clark County land conveyance expire two years after their effective date (Section 7(H)). Relatedly, although the act is an emergency measure, *only* its Clark County land conveyance provisions take immediate effect. The act's other land conveyance provisions discussed under the "*Land conveyances*" portion of this final analysis as well as the act's "*Codified law provisions*" discussed in the remaining portions of this final analysis take effect on the 91st day after the act's effective date. (Sections 8 and 9.)



### Codified law provisions

#### Greene County Prosecuting Attorney: prosecutions in the Fairborn and Xenia municipal courts

Under continuing law, generally, the village solicitor, city director of law, or similar chief legal officer for each municipal corporation within the territory of a municipal court must prosecute all cases brought before the court for criminal offenses *occurring within the municipal corporation* for which that person is the solicitor, director of law, or similar chief legal officer; these cases could involve violations of state law or of the city's or village's ordinances. Also, generally under continuing law, the chief legal officer of the municipal corporation in which a *municipal court is located* must prosecute all criminal cases brought before the court arising in the *unincorporated areas* within the court's territory; the latter criminal cases often involve violations of state law but could involve violations of county or township resolutions. (R.C. 1901.34(A).)

The act adds to the exceptions to the second of these rules for the prosecution of criminal cases in municipal courts, by authorizing the Greene County Prosecuting Attorney, with the concurrence of the Greene County Board of County Commissioners, to prosecute in the Fairborn Municipal Court all violations of *state law* arising within the unincorporated areas of Bath Township and Beavercreek Township in Greene County and to prosecute in the Xenia Municipal Court all violations of state law arising within the unincorporated areas of the townships of Caesar creek, Cedarville, Jefferson, Miami, New Jasper, Ross, Silvercreek, Spring Valley, Sugar creek, and Xenia in Greene County (R.C. 1901.34(B)). The effect of the act is to relieve the city of Fairborn's chief legal officer of the responsibility to prosecute state law violation cases arising in the specified townships in the Fairborn Municipal Court and to relieve the city of Xenia's chief legal officer of the responsibility to prosecute state law violation cases arising in the specified townships in the Xenia Municipal Court. In both cases, the specified townships are the only townships within the respective municipal court's territorial jurisdiction. (R.C. 1901.34(B) and R.C. 1901.02--not in the act.)

### Marking devices

Under continuing law, on and after the first federal election that occurs after January 1, 2006, unless required sooner by the Help America Vote Act of 2002 (HAVA), each polling location must have available for use at all elections at least one "direct recording electronic (DRE) voting machine" that is accessible for individuals with disabilities, including nonvisual accessibility for the blind and visually impaired, in a manner that provides the same opportunity for access and



participation, including privacy and independence, as for other voters. The act permits the alternative use at each polling location of at least one "marking device" that is accessible for individuals with disabilities. This marking device also must provide individuals with disabilities the same opportunity for access and participation, including privacy and independence, as for other voters. (R.C. 3506.19.)

As used in continuing Voting and Tabulating Equipment Law, a "marking device" is an apparatus operated by a voter to record the voter's choices through the piercing or marking of ballots enabling them to be examined and counted by automatic tabulating equipment, and a "direct recording electronic (DRE) voting machine" is a voting machine that records votes by means of a ballot display provided with mechanical or electro-optical components that can be actuated by the voter, that processes the data by means of a computer program, and that records voting data and ballot images in internal or external memory components. A DRE voting machine produces a tabulation of the voting data stored in a removable memory component and in printed copy. (R.C. 3506.01(A) and (F)--not in the act).<sup>1</sup>

---

<sup>1</sup> *Under continuing law, a voting machine cannot be approved by the Board of Voting Machine Examiners or certified by the Secretary of State, or be purchased, rented, or otherwise acquired, or used, except when specifically allowed for experimental use, unless it fulfills certain statutory requirements, including that, on and after the first federal election that occurs after January 1, 2006, unless required sooner by the HAVA, if the voting machine is a DRE voting machine, it must include a voter verified paper audit trail (R.C. 3506.10(P)--not in the act).*

*Continuing law defines a "voter verified paper audit trail" (VVPAT) as a physical paper printout on which the voter's ballot choices, as registered by a DRE voting machine are recorded. The voter must be permitted to visually or audibly inspect the contents of the physical paper printout, and it must be securely retained at the polling place until the close of the polls on the day of the election. After the physical paper printout is produced, but before the voter's ballot is recorded, the voter must have an opportunity to accept or reject the contents of the printout as matching the voter's ballot choices, and if a voter rejects those contents, the system that produces the VVPAT must invalidate the printout and permit the voter to recast the voter's ballot. On and after the first federal election that occurs after January 1, 2006, unless required sooner by HAVA, any system that produces a VVPAT must be accessible to disabled voters, including visually impaired voters, in the same manner as the DRE voting machine that produces it. (R.C. 3506.01(H)--not in the act.)*

*Finally, under continuing law, the Secretary of State is required, before initially certifying any DRE voting machine with a VVPAT, and as a condition for the continued certification and use of those machines, to establish, by rule, standards for the*



---

## HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	05-17-05	p. 521
Reported, S. State & Local Gov't & Veterans Affairs	05-26-05	p. 545
Passed Senate (32-0)	05-31-05	pp. 555-556
Reported, H. Local & Municipal Gov't & Urban Revitalization	06-21-05	p. 1365
Passed House (83-7)	08-02-05	pp. 1581-1587
Senate concurred in House amendments (28-2)	08-03-05	pp. 1381-1382

05-sb147-126.doc/jc

---

*certification of those machines that include, but are not limited to, a definition of a VVPAT as a paper record of the voter's choices that is verified by the voter prior to the casting of the voter's ballot and that is securely retained by the board of elections; requirements that the VVPAT must not be retained by any voter and not contain individual voter information; a prohibition against the production by any DRE voting machine of anything that legally could be removed by the voter from the polling place, such as a receipt or voter confirmation; a requirement that paper used in producing a VVPAT be sturdy, clean, and resistant to degradation; and a requirement that the VVPAT be capable of being optically scanned for the purpose of conducting a recount or other audit of the voting machine and be readable in a manner that makes the voter's ballot choices obvious to the voter without the use of computer or electronic codes (R.C. 3506.05(H)(3)--not in the act).*

