Ohio Legislative Service Commission

Bill Analysis

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Sub. H.B. 274*

129th General Assembly
(As Reported by S. Judiciary)

Reps. Letson, Bubp, Antonio, Brenner, Combs, Derickson, Foley, Mallory, Milkovich, Murray, O'Brien, Okey, Ramos, Szollosi, Winburn, Yuko, Batchelder

BILL SUMMARY

- Provides that a transfer fee for purposes of a transfer fee covenant, which is not binding on or enforceable against a subsequent owner, purchaser, or mortgagee of real property, does not include any payment required pursuant to a conservation easement or agricultural easement.

- Authorizes the Governor to execute a deed conveying water rights in real property to the Wayne County Board of County Commissioners.

- Provides that the conveyance of the premises to the Wayne County Board of County Commissioners is upon such consideration as is determined by the Director of Administrative Services to be fair and reasonable.

- Provides that the deed may contain any terms and conditions the Director determines to be in the best interest of the state and that the deed may contain restrictions that the Director determines are reasonably necessary to protect the state's interest in any of its remaining interests in the premises, including its gas and mineral rights.

- Authorizes the Governor to execute a deed conveying state owned land to the Mansfield Reformatory Preservation Society.

- Provides that the conveyance by the grantee to the state of two parcels of land situated in the City of Mansfield, Madison Township, Richland County, is the consideration to the state for the state premises being conveyed.

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* This analysis was prepared before the report of the Senate Judiciary Committee appeared in the Senate Journal. Note that the list of co-sponsors and the legislative history may be incomplete.

- Requires the grantee to use, develop, and occupy the state premises being conveyed for historic preservation purposes only; the state maintains a right of reversion in the event the grantee ceases to so use the state premises and the grantee similarly retains a right of reversion for the two parcels conveyed as consideration if the state premises reverts back to the state.

CONTENT AND OPERATION

Environmental covenant

For purposes of the provisions on transfer fee covenants described below, "transfer fee" does not include any payment required pursuant to an "environmental covenant," which currently means a servitude that imposes activity and use limitations on real property and meets the requirements of R.C. 5301.82.[1] The bill expands the definition of "environmental covenant" to also mean a "conservation easement" or "agricultural easement" as defined in current law (see "**Definitions**," below), thus providing that a transfer fee for purposes of a transfer fee covenant does not include any payment required pursuant to a conservation easement or agricultural easement.[2]

Transfer fee covenant

Existing law provides that a "transfer fee covenant" recorded in Ohio on or after September 13, 2010 (effective date of Sub. H.B. 292 of the 128th General Assembly enacting the Transfer Fee Covenant Law), does not run with the title to real property and is not binding on or enforceable against any subsequent owner, purchaser, or mortgagee of any interest in real property as an equitable servitude or otherwise. It further provides that any lien purporting to secure the payment of a "transfer fee" under a transfer fee covenant that is recorded in Ohio on or after that effective date is void.[3] "Transfer fee covenant" means a declaration or covenant recorded against the title to real property that requires or purports to require the payment of a "transfer fee" to the declarant or other person specified in the declaration or covenant or to their successors or assigns upon a subsequent transfer of an interest in the real property.[4] "Transfer fee" means a fee or charge required by a transfer fee covenant and payable upon the transfer of an interest in real property, or payable for the right to make or accept such a transfer, regardless of whether the fee or charge is a fixed amount or is determined as a

[1] R.C. 5301.057(A)(1) and (3)(h).

[2] R.C. 5301.057(A)(1)(b).

[3] R.C. 5301.057(B) and (C).

[4] R.C. 5301.057(A)(4).

percentage of the value of the property, the purchase price, or other consideration given for the transfer.[5] The law lists types of fees or amounts that are not transfer fees for purposes of this definition, including any payment required pursuant to an "environmental covenant."[6]

Definitions

For purposes of its provisions, the bill defines the following terms as in current law:[7]

"Conservation easement" means an incorporeal right or interest in land that is or does all of the following: (1) is held for the public purpose of retaining land, water, or wetland areas predominantly in their natural, scenic, open, or wooded condition, including, without limitation, the use of land in agriculture when consistent with and in furtherance of the purpose of retaining those areas in such a condition, or retaining their use predominantly as suitable habitat for fish, plants, or wildlife, (2) imposes any limitations on the use or development of the areas that are appropriate at the time of creation of the conservation easement to achieve one or more of those purposes, and (3) includes appropriate provisions for the holder to enter the property subject to the easement at reasonable times to ensure compliance with its provisions.

"Agricultural easement" means an incorporeal right or interest in land that is or does all of the following: (1) is held for the public purpose of retaining the use of land predominantly in agriculture, (2) imposes any limitations on the use or development of the land that are appropriate at the time of creation of the easement to achieve that purpose, (3) is in the form of articles of dedication, easement, covenant, restriction, or condition, and (4) includes appropriate provisions for the holder to enter the property subject to the easement at reasonable times to ensure compliance with its provisions.

Land conveyance by Governor's deed to Wayne County Board of County Commissioners

The bill authorizes the Governor to execute a deed in the name of the state conveying the water rights in real property described in the bill to the Wayne County Board of County Commissioners.[8] Conveyance of the premises to the Wayne County

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[5] R.C. 5301.057(A)(3).

[6] R.C. 5301.057(A)(3)(h).

[7] R.C. 5301.67(A) and (C), not in the bill.

[8] Section 3(A).

Board of County Commissioners is upon such consideration as is determined by the Director of Administrative Services to be fair and reasonable.[9]

The Wayne County Board of County Commissioners must pay all costs associated with the purchase and conveyance of the premises. Those costs include, but are not limited to, surveying costs, title costs, preparation of metes and bounds property descriptions, appraisals, and recordation costs of the deed.[10] The deed may contain any terms and conditions the Director determines to be in the best interest of the state. The deed may contain restrictions that the Director determines are reasonably necessary to protect the state's interest in any of its remaining interests in the premises, including its gas and mineral rights.[11]

The authority to convey the real estate expires two years after the effective date of the bill.[12] Upon receipt of the consideration, the State Auditor, with the assistance of the Attorney General, must prepare the deed to the premises. The deed must state the consideration and any terms or conditions and any restrictions. The Governor must execute the deed in the name of the state, countersigned by the Secretary of State, presented in the Office of the State Auditor for recording, and delivered to the Wayne County Board of County Commissioners. The Board must present the deed for recording in the Office of the Wayne County Recorder.[13]

Conveyance by Governor's deed to Mansfield Reformatory Preservation Society

The bill authorizes the Governor to execute a deed in the name of the state, conveying all the state's right, title, and interest in real property described in the bill to the Mansfield Reformatory Preservation Society.[14] As consideration for the conveyance, the grantee is to convey two parcels of land described in the bill, both of which are situated in the City of Mansfield, Madison Township, Richland County, to the state. The two parcels together total 3.092 acres of land.[15]

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[9] Section 3(B).

[10] Section 3(C).

[11] Section 3(D).

[12] Section 3(F).

[13] Section 3(E).

[14] Section 1(A) of the bill.

[15] Section 1(B) of the bill.

The conveyance from the state to the grantee is subject to the following restrictions: (1) the grantee agrees that it will not use or develop the state premises such that it will interfere with the quiet enjoyment of the neighboring state-owned land, and (2) the grantee must use, develop, and occupy the state premises for historic preservation purposes only, including a parking lot, public tours, and other uses incidental to these purposes. If the grantee ceases to use the state premises as specified, all right, title, and interest in the state premises will revert back to the state, at the state's discretion, without the need for any further action by the state. If reversion of the state premises takes place, title to the land constituting the grantee's consideration simultaneously reverts back to the grantee.[16]

The authority to convey the real estate expires two years after the effective date of the bill.[17] The Auditor of State, with the assistance of the Attorney General, must prepare the deed to the state premises upon receipt of the consideration. The deed must state the restrictions. The deed must be executed by the Governor in the name of the state, countersigned by the Secretary of State, sealed with the Great Seal of the State, presented in the Office of the Auditor of State for recording, and delivered to the grantee. The grantee must present the deed for recording in the Richland County Recorder's Office.[18]

The bill requires the grantee to pay all costs associated with the purchase and conveyance of the state premises, as well as all costs associated with the sale and conveyance of the two parcels constituting the consideration, which costs include, but are not limited to: surveying costs, title costs, preparation of metes and bounds property descriptions, appraisals, environmental studies, assessments, remediation, and recordation costs.[19]

HISTORY

ACTION	DATE
Introduced	06-21-11
Reported, H. Judiciary & Ethics	05-16-12
Passed House (92-0)	11-27-12
Reported, S. Judiciary	---

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[16] Section 1(C) of the bill.

[17] Section 1(F) of the bill.

[18] Section 1(D) of the bill.

[19] Section 1(E) of the bill.