



# Members Brief

An informational brief prepared by the LSC staff for members and staff of the Ohio General Assembly

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## Land Conveyance Bills

As time passes, the needs of state agencies change, and an agency may no longer need some of the land under its control. As a general rule, though, state agencies do not own the land under their control; it is owned by the state. Therefore, most agencies do not have the authority to convey the land.

A land conveyance bill introduced in the General Assembly proposes uncodified law to authorize a state official, usually the Governor, to convey state-owned land specified in the bill. A land conveyance is not required to stand alone: it also could take the form of an amendment to another bill. A land conveyance bill resembles a contract to purchase land in that it specifies the terms of a subsequent conveyance.

This informational brief sets forth the manner in which land conveyance bills are drafted for introduction by a member of the General Assembly.

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### Who originates a land conveyance bill?

Typically, land conveyance bills originate with the Department of Administrative Services (DAS). DAS is the agency that has the responsibility to exercise general custodial care of state-owned land. It has the authority to correct legal descriptions and title defects in state land and, with the Controlling Board's approval, to sell state land worth \$100,000 or less. Recent legislation that takes effect in July 2022 also authorizes DAS to sell state-owned land that is held for the benefit of a state institution of higher education and is worth \$10 million or less, if both the institution's board and the Controlling Board approve the sale.<sup>1</sup>

DAS typically prepares the deeds for the conveyance of state-owned land and is responsible for keeping a record of the state's interest in land. DAS, or the agency working with DAS, typically identifies unneeded land and proposes the terms of the conveyance, which may

<sup>1</sup> R.C. 123.01, as amended by S.B. 135 of the 134<sup>th</sup> General Assembly.

identify a buyer, a purchase price, and possible restrictions. DAS then approaches the General Assembly to have the bill drafted and introduced. However, members may propose land conveyances on their own, as well.<sup>2</sup>

## **Information needed to draft a land conveyance bill**

To draft a land conveyance bill, usually five questions need to be answered. Several interested parties often are involved, and they usually are available to provide a member considering sponsoring a land conveyance bill with the information relating to these questions.

### **In whose name is the land held?**

Generally, land is held in the name of the state and under the control of a state agency. Sometimes, however, this is not the case. The current deed reveals who owns the land. Knowing the identity of the current owner enables the member and the drafter of the conveyance bill to do several things:

- Decide whether a land conveyance bill is needed. Some state agencies have independent statutory authority to convey land;<sup>3</sup>
- Enable the member to decide who should be given authorization to convey the land;
- Enable the member to check with the state agency having control over the land to determine if the agency will agree to the conveyance.

### **To whom will the land be conveyed?**

Often, the person or entity to receive the land is specified in the bill, but this is not the only option. The land conveyance bill also can provide that the land be sold at auction, provide that it be sold through a real estate broker, or provide another procedure by which the person to receive the land will be determined.

### **What is the land to be conveyed?**

Usually the bill includes a legal description of the land to be conveyed because, if no legal description is included, it is unclear what is to be conveyed. If a legal description is not available, the bill can contain a general description of the land and require that someone subsequently survey the land and provide a legal description to be used in the deed.

### **What is to be given in exchange for the land?**

In legal terms, the question is “What is the consideration?” “Consideration” is the value received for the land and usually consists of money, other land, or some mutual benefit to the state and some other entity.

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<sup>2</sup> R.C. 123.01 and 123.02.

<sup>3</sup> R.C. 3335.13, in the case of Ohio State University, for example. Even if a state agency has independent statutory authority to convey land, the General Assembly can override the agency’s wishes in a land conveyance.

- Money – The bill can specify a specific amount, specify that it be an amount agreed upon between the buyer and DAS or the agency, or provide that the amount be determined by an appraiser. The bill also can require the buyer to put down a percentage of the purchase price as earnest money.
- Other land – Sometimes the state wants land that another entity owns, and that other entity wants land that the state owns; one solution is a “land swap.”
- Mutual benefit – This option is used most often when the entity receiving the land is a political subdivision, because, in effect, the land is given away. (Example: The consideration for the conveyance of the land is the mutual benefit accruing to the state and the city of Lillian from the city’s use of the land as a park.)

### **Will there be any conditions on the conveyance?**

**Typical conditions.** Land conveyance bills typically require the conveyance to be subject to all easements, leases, and restrictions of record; public rights of way; zoning laws; and real estate taxes not yet due. The land is also typically conveyed in an “as-is, where-is, with all faults” condition, which basically means “as-is.”

**Examples of conditions.** Sometimes DAS, the agency, or the member will want to put conditions on the conveyance. These conditions may include:

- Requiring the land to be used in a certain way, such as a city park;
- Reserving to the state the right to buy back the land under specified terms if the entity receiving the land (the grantee) ever wishes to sell it;
- Reserving to the state some rights over the land, such as an ingress-egress easement;
- Requiring the grantee to agree to assume the liability for any claim arising out of the land if, subsequent to the conveyance, someone other than the grantee sues the state in regard to some defect in the land. This condition is useful if there are environmental concerns regarding the land.
- Conditions not specified in the bill but to be determined by DAS or the agency.

**Enforcement mechanisms.** Real estate law provides several mechanisms to enforce a condition:

- Possibility of reverter – If a condition specified in the bill (and therefore the deed) occurs, the title to the land automatically reverts to the state, without any action on the part of the state.
- Right of re-entry – If a condition specified in the bill (and therefore the deed) occurs, the state has the right to retake the land. This option requires an affirmative action on the part of the state.
- No enforcement provision – If no enforcement mechanism is included in the bill, the state may still sue for damages for breach of the condition.

## Elements of a land conveyance bill

A land conveyance bill usually contains the following elements in the following order:

### **Authorization clause**

The authorization clause is usually the first provision in the bill and authorizes an official or entity, usually the Governor, to convey the land described in the bill.

### **Legal description**

The legal description describes the land to be conveyed pursuant to the bill.

### **Conditions**

If any conditions are to be placed on the conveyance, these conditions are usually described in the bill after the land is described.

### **Consideration**

The bill describes what the state is to receive in exchange for conveying the land. This provision also may describe how the consideration will be determined, such as by a sealed bid auction.

### **Earmarking the proceeds of the conveyance**

Typically, the bill provides where the money the state receives in exchange for conveying the land goes, such as being deposited into the General Revenue Fund or an account of the agency.

### **Costs of the conveyance**

Unless the bill provides otherwise, each party pays its own costs associated with the conveyance. The bill can establish a different arrangement.

### **Preparation of the deed**

Each land conveyance bill contains a standard provision describing how the deed is to be prepared, executed, and recorded. This provision parallels requirements and procedures in permanent law regarding the preparation, execution, and recording of a deed to state-owned land.<sup>4</sup>

### **Expiration date**

Usually land conveyance bills expire three years after they take effect. This can be changed if the member thinks the circumstances warrant a different time period. The reason for this short expiration period is that occasionally the conveyance is not completed. Without the expiration clause, any subsequent land conveyance bill regarding that land must repeal the first bill. If the first bill is overlooked and not repealed, the validity of a deed issued pursuant to the second conveyance bill is put into question. While the second grantee might win in court, a better approach is to avoid the courthouse entirely.

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<sup>4</sup> R.C. 5301.13.

## **Procedure once a land conveyance bill is introduced**

Once the bill is drafted and introduced, the bill usually is referred to the standing committee that has been designated to handle land conveyance bills. DAS and the agency having control of the land may testify and provide any additional information that is needed. Land conveyance bills proceed as other legislation.