As Introduced

133rd General Assembly
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H. B. No. 43

Representative Ingram

Cosponsors: Representatives Jones, Kelly, Lang, Miller, J., Miranda, Patterson, Riedel, Rogers, Skindell, Sobecki

A BILL

To amend sections 3313.41, 3318.08, and 5705.10, to enact new section 3313.411, and to repeal sections 3313.411, 3313.412, and 3313.413 of the Revised Code to eliminate the right of first refusal for certain schools in the acquisition of school district real property.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 3313.41, 3318.08, and 5705.10 of the Revised Code be amended and new section 3313.411 be enacted to read as follows:

Sec. 3313.41. (A) Except as provided in divisions (C), (D), and (F) of this section and in sections 3313.412 and 3313.413 of the Revised Code, when a board of education decides to dispose of real or personal property that it owns in its corporate capacity and that exceeds in value ten thousand dollars, it shall sell the property at public auction, after giving at least thirty days' notice of the auction by publication in a newspaper of general circulation in the school district, by publication as provided in section 7.16 of the
As Introduced

Revised Code, or by posting notices in five of the most public places in the school district in which the property, if it is real property, is situated, or, if it is personal property, in the school district of the board of education that owns the property. The board may offer real property for sale as an entire tract or in parcels.

(B) When the board of education has offered real or personal property for sale at public auction at least once pursuant to division (A) of this section, and the property has not been sold, the board may sell it at a private sale. Regardless of how it was offered at public auction, at a private sale, the board shall, as it considers best, sell real property as an entire tract or in parcels, and personal property in a single lot or in several lots.

(C) If a board of education decides to dispose of real or personal property that it owns in its corporate capacity and that exceeds in value ten thousand dollars, it may sell the property to the adjutant general; to any subdivision or taxing authority as respectively defined in section 5705.01 of the Revised Code, township park district, board of park commissioners established under Chapter 755. of the Revised Code, or park district established under Chapter 1545. of the Revised Code; to a wholly or partially tax-supported university, university branch, or college; to a nonprofit institution of higher education that has a certificate of authorization under Chapter 1713. of the Revised Code; to the governing authority of a chartered nonpublic school; or to the board of trustees of a school district library, upon such terms as are agreed upon. The sale of real or personal property to the board of trustees of a school district library is limited, in the case of real property, to a school district library within whose boundaries
the real property is situated, or, in the case of personal property, to a school district library whose boundaries lie in whole or in part within the school district of the selling board of education.

(D) When a board of education decides to trade as a part or an entire consideration, an item of personal property on the purchase price of an item of similar personal property, it may trade the same upon such terms as are agreed upon by the parties to the trade.

(E) The president and the treasurer of the board of education shall execute and deliver deeds or other necessary instruments of conveyance to complete any sale or trade under this section.

(F) When a board of education has identified a parcel of real property that it determines is needed for school purposes, the board may, upon a majority vote of the members of the board, acquire that property by exchanging real property that the board owns in its corporate capacity for the identified real property or by using real property that the board owns in its corporate capacity as part or an entire consideration for the purchase price of the identified real property. Any exchange or acquisition made pursuant to this division shall be made by a conveyance executed by the president and the treasurer of the board.

(G) When a school district board of education has property that the board, by resolution, finds is not needed for school district use, is obsolete, or is unfit for the use for which it was acquired, the board may donate that property in accordance with this division if the fair market value of the property is, in the opinion of the board, two thousand five hundred dollars
The property may be donated to an eligible nonprofit organization that is located in this state and is exempt from federal income taxation pursuant to 26 U.S.C. 501(a) and (c)(3). Before donating any property under this division, the board shall adopt a resolution expressing its intent to make unneeded, obsolete, or unfit-for-use school district property available to these organizations. The resolution shall include guidelines and procedures the board considers to be necessary to implement the donation program and shall indicate whether the school district will conduct the donation program or the board will contract with a representative to conduct it. If a representative is known when the resolution is adopted, the resolution shall provide contact information such as the representative's name, address, and telephone number.

The resolution shall include within its procedures a requirement that any nonprofit organization desiring to obtain donated property under this division shall submit a written notice to the board or its representative. The written notice shall include evidence that the organization is a nonprofit organization that is located in this state and is exempt from federal income taxation pursuant to 26 U.S.C. 501(a) and (c)(3); a description of the organization's primary purpose; a description of the type or types of property the organization needs; and the name, address, and telephone number of a person designated by the organization's governing board to receive donated property and to serve as its agent.

After adoption of the resolution, the board shall publish, in a newspaper of general circulation in the school district or as provided in section 7.16 of the Revised Code, notice of its
intent to donate unneeded, obsolete, or unfit-for-use school
district property to eligible nonprofit organizations. The
notice shall include a summary of the information provided in
the resolution and shall be published twice. The second notice
shall be published not less than ten nor more than twenty days
after the previous notice. A similar notice also shall be posted
continually in the board's office. If the school district
maintains a web site on the internet, the notice shall be posted
continually at that web site.

The board or its representatives shall maintain a list of
all nonprofit organizations that notify the board or its
representative of their desire to obtain donated property under
this division and that the board or its representative
determines to be eligible, in accordance with the requirements
set forth in this section and in the donation program's
guidelines and procedures, to receive donated property.

The board or its representative also shall maintain a list
of all school district property the board finds to be unneeded,
obsolete, or unfit for use and to be available for donation
under this division. The list shall be posted continually in a
conspicuous location in the board's office, and, if the school
district maintains a web site on the internet, the list shall be
posted continually at that web site. An item of property on the
list shall be donated to the eligible nonprofit organization
that first declares to the board or its representative its
desire to obtain the item unless the board previously has
established, by resolution, a list of eligible nonprofit
organizations that shall be given priority with respect to the
item's donation. Priority may be given on the basis that the
purposes of a nonprofit organization have a direct relationship
to specific school district purposes of programs provided or
administered by the board. A resolution giving priority to certain nonprofit organizations with respect to the donation of an item of property shall specify the reasons why the organizations are given that priority.

Members of the board shall consult with the Ohio ethics commission, and comply with Chapters 102. and 2921. of the Revised Code, with respect to any donation under this division to a nonprofit organization of which a board member, any member of a board member's family, or any business associate of a board member is a trustee, officer, board member, or employee.

**Sec. 3313.411.** (A) Except as provided in division (B) of this section, the governing authority of a community school, the board of trustees of a college-preparatory boarding school, or the governing body of a STEM school shall not sell any property purchased under division (B) of section 3313.411 of the Revised Code as it existed prior to the effective date of this section within five years of purchasing that property.

(B) The governing authority, board of trustees, or governing body may sell a property purchased under division (B) of section 3313.411 of the Revised Code as it existed prior to the effective date of this section within five years of the purchase, only if the governing authority, board of trustees, or governing body sells or transfers that property to another governing authority, board of trustees, or governing body.

**Sec. 3318.08.** Except in the case of a joint vocational school district that receives assistance under sections 3318.40 to 3318.45 of the Revised Code, if the requisite favorable vote on the election is obtained, or if the school district board has resolved to apply the proceeds of a property tax levy or the proceeds of an income tax, or a combination of proceeds from
such taxes, as authorized in section 3318.052 of the Revised Code, the Ohio facilities construction commission, upon certification to it of either the results of the election or the resolution under section 3318.052 of the Revised Code, shall enter into a written agreement with the school district board for the construction and sale of the project. In the case of a joint vocational school district that receives assistance under sections 3318.40 to 3318.45 of the Revised Code, if the school district board of education and the school district electors have satisfied the conditions prescribed in division (D)(1) of section 3318.41 of the Revised Code, the commission shall enter into an agreement with the school district board for the construction and sale of the project. In either case, the agreement shall include, but need not be limited to, the following provisions:

(A) The sale and issuance of bonds or notes in anticipation thereof, as soon as practicable after the execution of the agreement, in an amount equal to the school district's portion of the basic project cost, including any securities authorized under division (J) of section 133.06 of the Revised Code and dedicated by the school district board to payment of the district's portion of the basic project cost of the project; provided, that if at that time the county treasurer of each county in which the school district is located has not commenced the collection of taxes on the general duplicate of real and public utility property for the year in which the controlling board approved the project, the school district board shall authorize the issuance of a first installment of bond anticipation notes in an amount specified by the agreement, which amount shall not exceed an amount necessary to raise the net bonded indebtedness of the school district as of the date of
the controlling board's approval to within five thousand dollars of the required level of indebtedness for the preceding year. In the event that a first installment of bond anticipation notes is issued, the school district board shall, as soon as practicable after the county treasurer of each county in which the school district is located has commenced the collection of taxes on the general duplicate of real and public utility property for the year in which the controlling board approved the project, authorize the issuance of a second and final installment of bond anticipation notes or a first and final issue of bonds.

The combined value of the first and second installment of bond anticipation notes or the value of the first and final issue of bonds shall be equal to the school district's portion of the basic project cost. The proceeds of any such bonds shall be used first to retire any bond anticipation notes. Otherwise, the proceeds of such bonds and of any bond anticipation notes, except the premium and accrued interest thereon, shall be deposited in the school district's project construction fund. In determining the amount of net bonded indebtedness for the purpose of fixing the amount of an issue of either bonds or bond anticipation notes, gross indebtedness shall be reduced by moneys in the bond retirement fund only to the extent of the moneys therein on the first day of the year preceding the year in which the controlling board approved the project. Should there be a decrease in the tax valuation of the school district so that the amount of indebtedness that can be incurred on the tax duplicates for the year in which the controlling board approved the project is less than the amount of the first installment of bond anticipation notes, there shall be paid from the school district's project construction fund to the school district's bond retirement fund to be applied against such notes.
an amount sufficient to cause the net bonded indebtedness of the school district, as of the first day of the year following the year in which the controlling board approved the project, to be within five thousand dollars of the required level of indebtedness for the year in which the controlling board approved the project. The maximum amount of indebtedness to be incurred by any school district board as its share of the cost of the project is either an amount that will cause its net bonded indebtedness, as of the first day of the year following the year in which the controlling board approved the project, to be within five thousand dollars of the required level of indebtedness, or an amount equal to the required percentage of the basic project costs, whichever is greater. All bonds and bond anticipation notes shall be issued in accordance with Chapter 133. of the Revised Code, and notes may be renewed as provided in section 133.22 of the Revised Code.

(B) The transfer of such funds of the school district board available for the project, together with the proceeds of the sale of the bonds or notes, except premium, accrued interest, and interest included in the amount of the issue, to the school district's project construction fund;

(C) For all school districts except joint vocational school districts that receive assistance under sections 3318.40 to 3318.45 of the Revised Code, the following provisions as applicable:

(1) If section 3318.052 of the Revised Code applies, the earmarking of the proceeds of a tax levied under section 5705.21 of the Revised Code for general permanent improvements or under section 5705.218 of the Revised Code for the purpose of permanent improvements, or the proceeds of a school district
income tax levied under Chapter 5748. of the Revised Code, or
the proceeds from a combination of those two taxes, in an amount
to pay all or part of the service charges on bonds issued to pay
the school district portion of the project and an amount
equivalent to all or part of the tax required under division (B)
of section 3318.05 of the Revised Code;

(2) If section 3318.052 of the Revised Code does not
apply, one of the following:

(a) The levy of the tax authorized at the election for the
payment of maintenance costs, as specified in division (B) of
section 3318.05 of the Revised Code;

(b) If the school district electors have approved a
continuing tax for general permanent improvements under section
5705.21 of the Revised Code and that tax can be used for
maintenance, the earmarking of an amount of the proceeds from
such tax for maintenance of classroom facilities as specified in
division (B) of section 3318.05 of the Revised Code;

(c) If, in lieu of the tax otherwise required under
division (B) of section 3318.05 of the Revised Code, the
commission has approved the transfer of money to the maintenance
fund in accordance with section 3318.051 of the Revised Code, a
requirement that the district board comply with the provisions
of that section. The district board may rescind the provision
prescribed under division (C)(2)(c) of this section only so long
as the electors of the district have approved, in accordance
with section 3318.063 of the Revised Code, the levy of a tax for
the maintenance of the classroom facilities acquired under the
district's project and that levy continues to be collected as
approved by the electors.
(D) For joint vocational school districts that receive assistance under sections 3318.40 to 3318.45 of the Revised Code, provision for deposit of school district moneys dedicated to maintenance of the classroom facilities acquired under those sections as prescribed in section 3318.43 of the Revised Code;

(E) Dedication of any local donated contribution as provided for under section 3318.084 of the Revised Code, including a schedule for depositing such moneys applied as an offset of the district's obligation to levy the tax described in division (B) of section 3318.05 of the Revised Code as required under division (D)(2) of section 3318.084 of the Revised Code;

(F) Ownership of or interest in the project during the period of construction, which shall be divided between the commission and the school district board in proportion to their respective contributions to the school district's project construction fund;

(G) Maintenance of the state's interest in the project until any obligations issued for the project under section 3318.26 of the Revised Code are no longer outstanding;

(H) The insurance of the project by the school district from the time there is an insurable interest therein and so long as the state retains any ownership or interest in the project pursuant to division (F) of this section, in such amounts and against such risks as the commission shall require; provided, that the cost of any required insurance until the project is completed shall be a part of the basic project cost;

(I) The certification by the director of budget and management that funds are available and have been set aside to meet the state's share of the basic project cost as approved by
the controlling board pursuant to either section 3318.04 or
division (B)(1) of section 3318.41 of the Revised Code;

(J) Authorization of the school district board to
advertise for and receive construction bids for the project, for
and on behalf of the commission, and to award contracts in the
name of the state subject to approval by the commission;

(K) Provisions for the disbursement of moneys from the
school district's project account upon issuance by the
commission or the commission's designated representative of
vouchers for work done to be certified to the commission by the
treasurer of the school district board;

(L) Disposal of any balance left in the school district's
project construction fund upon completion of the project;

(M) Limitations upon use of the project or any part of it
so long as any obligations issued to finance the project under
section 3318.26 of the Revised Code are outstanding;

(N) Provision for vesting the state's interest in the
project to the school district board when the obligations issued
to finance the project under section 3318.26 of the Revised Code
are outstanding;

(O) Provision for deposit of an executed copy of the
agreement in the office of the commission;

(P) Provision for termination of the contract and release
of the funds encumbered at the time of the conditional approval,
if the proceeds of the sale of the bonds of the school district
board are not paid into the school district's project
construction fund and if bids for the construction of the
project have not been taken within such period after the
execution of the agreement as may be fixed by the commission;
(Q) Provision for the school district to maintain the project in accordance with a plan approved by the commission;

(R) Provision that all state funds reserved and encumbered to pay the state share of the cost of the project and the funds provided by the school district to pay for its share of the project cost, including the respective shares of the cost of a segment if the project is divided into segments, be spent on the construction and acquisition of the project or segment simultaneously in proportion to the state's and the school district's respective shares of that basic project cost as determined under section 3318.032 of the Revised Code or, if the district is a joint vocational school district, under section 3318.42 of the Revised Code. However, if the school district certifies to the commission that expenditure by the school district is necessary to maintain the federal tax status or tax-exempt status of notes or bonds issued by the school district to pay for its share of the project cost or to comply with applicable temporary investment periods or spending exceptions to rebate as provided for under federal law in regard to those notes or bonds, the school district may commit to spend, or spend, a greater portion of the funds it provides during any specific period than would otherwise be required under this division.

(S) A provision stipulating that the commission may prohibit the district from proceeding with any project if the commission determines that the site is not suitable for construction purposes. The commission may perform soil tests in its determination of whether a site is appropriate for construction purposes.

(T) A provision stipulating that, unless otherwise
authorized by the commission, any contingency reserve portion of
the construction budget prescribed by the commission shall be
used only to pay costs resulting from unforeseen job conditions,
to comply with rulings regarding building and other codes, to
pay costs related to design clarifications or corrections to
contract documents, and to pay the costs of settlements or
judgments related to the project as provided under section
3318.086 of the Revised Code;

(U) A provision stipulating that for continued release of
project funds the school district board shall comply with
sections section_3313.41, 3313.411, and 3313.413 of the Revised
Code throughout the project and shall notify the department of
education and the Ohio community school association when the
board plans to dispose of facilities by sale under that section;

(V) A provision stipulating that the commission shall not
approve a contract for demolition of a facility until the school
district board has complied with sections section_3313.41,
3313.411, and 3313.413 of the Revised Code relative to that
facility, unless demolition of that facility is to clear a site
for construction of a replacement facility included in the
district's project;

(W) A requirement for the school district to adhere to a
facilities maintenance plan approved by the commission.

Sec. 5705.10. (A) All revenue derived from the general
levy for current expense within the ten-mill limitation, from
any general levy for current expense authorized by vote in
excess of the ten-mill limitation, and from sources other than
the general property tax, unless its use for a particular
purpose is prescribed by law, shall be paid into the general
fund.
(B) All revenue derived from general or special levies for debt charges, whether within or in excess of the ten-mill limitation, which is levied for the debt charges on serial bonds, notes, or certificates of indebtedness having a life less than five years, shall be paid into the bond retirement fund; and all such revenue which is levied for the debt charges on all other bonds, notes, or certificates of indebtedness shall be paid into the sinking fund.

(C) All revenue derived from a special levy shall be credited to a special fund for the purpose for which the levy was made.

(D) Except as otherwise provided by resolution adopted pursuant to section 3315.01 of the Revised Code, all revenue derived from a source other than the general property tax and which the law prescribes shall be used for a particular purpose, shall be paid into a special fund for such purpose. Except as otherwise provided by resolution adopted pursuant to section 3315.01 of the Revised Code or as otherwise provided by section 3315.40 of the Revised Code, all revenue derived from a source other than the general property tax, for which the law does not prescribe use for a particular purpose, including interest earned on the principal of any special fund, regardless of the source or purpose of the principal, shall be paid into the general fund.

(E) All proceeds from the sale of public obligations or fractionalized interests in public obligations as defined in section 133.01 of the Revised Code, except premium and accrued interest, shall be paid into a special fund for the purpose of such issue, and any interest and other income earned on money in such special fund may be used for the purposes for which the
indebtedness was authorized or may be credited to the general
fund or other fund or account as the taxing authority authorizes
and used for the purposes of that fund or account. The premium
and accrued interest received from such sale shall be paid into
the sinking fund or the bond retirement fund of the subdivision.

(F) Except as provided in divisions (G) and (H) of this
section, if a permanent improvement of the subdivision is sold,
the amount received from the sale shall be paid into the sinking
fund, the bond retirement fund, or a special fund for the
construction or acquisition of permanent improvements; provided
that the proceeds from the sale of a public utility shall be
paid into the sinking fund or bond retirement fund to the extent
necessary to provide for the retirement of the outstanding
indebtedness incurred in the construction or acquisition of such
utility. Proceeds from the sale of property other than a
permanent improvement shall be paid into the fund from which
such property was acquired or is maintained or, if there is no
such fund, into the general fund.

(G) A township that has a population greater than fifteen
thousand according to the most recent federal decennial census
and that has declared one or more improvements in the township
to be a public purpose under section 5709.73 of the Revised Code
may pay proceeds from the sale of a permanent improvement of the
township into its general fund if both of the following
conditions are satisfied:

(1) The township fiscal officer determines that all
foreseeable public infrastructure improvements, as defined in
section 5709.40 of the Revised Code, to be made in the township
in the ten years immediately following the date the permanent
improvement is sold will have been financed through resolutions
adopted under section 5709.73 of the Revised Code on or before the date of the sale. The fiscal officer shall provide written certification of this determination for the township's records.

(2) The permanent improvement being sold was financed entirely from moneys in the township's general fund.

(H) If a board of education of a school district disposes of real property under section 3313.41, 3313.411, or 3313.413 of the Revised Code, the proceeds received on or after September 29, 2013, from the sale shall be used for either of the following purposes:

(1) The retirement of any debt that was incurred by the district with respect to that real property. Proceeds in excess of the funds necessary to retire that debt may be paid into the school district's capital and maintenance fund and used only to pay for the costs of nonoperating capital expenses related to technology infrastructure and equipment to be used for instruction and assessment.

(2) Payment into a special fund for the construction or acquisition of permanent improvements.

(I) Money paid into any fund shall be used only for the purposes for which such fund is established.

Section 2. That existing sections 3313.41, 3318.08, and 5705.10 and sections 3313.411, 3313.412, and 3313.413 of the Revised Code are hereby repealed.