



Ohio Legislative Service Commission

122nd Final Bill Analysis

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Am. Sub. S.B. 223

122nd General Assembly
(As Passed by the General Assembly)

Sens. Drake, Herington, Mumper, Gaeth, Kearns, Carnes, White, Latta, DiDonato, Hagan, Howard, Nein, Blessing, Finan, Gardner

Reps. Mottley, Lawrence, Jones, Williams, Thomas, Britton, Brady, Krebs, Logan, Mead, Miller, Core, Verich, Clancy, Lucas, Patton, Haines, Harris, Metzger, Vesper, Olman, Womer Benjamin, Reid, Terwilleger

Effective date: ** The Legislative Service Commission had not received formal notification of the effective date at the time this analysis was prepared.

- Authorizes the creation of agricultural easements to retain the use of land predominantly in agriculture.
- Authorizes the Director of Agriculture, municipal corporations, counties, townships, and charitable organizations to acquire agricultural easements.
- Authorizes the Director to acquire agricultural real property, and personal property necessary for the use of land predominately in agriculture.

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CONTENT AND OPERATION

Definitions of agricultural easement, agriculture, and conservation easement

(sec. 5301.67)

The act defines an "agricultural easement" as an incorporeal right or interest in land that is held for the public purpose of retaining the use of land predominately in agriculture; that 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; that is in the form of articles of dedication, easement, covenant, restriction, or condition; and that includes appropriate provisions for the holder to enter the property subject to the easement at reasonable times to ensure compliance with its provisions. The act defines "agriculture" as those activities occurring on "land devoted exclusively to agricultural use," which is land eligible for favorable property tax valuation under continuing law.

The act also slightly modifies the definition of "conservation easement" for the purpose of determining the kinds of conservation easements that certain state agencies, local governments, and charitable organizations may own. Previously, conservation easements were defined as interests in land that were held to keep the land in its natural, scenic, open, or wooded condition, to keep the land in use for agricultural, horticultural, or silvicultural (forestry) purposes or "other farming or forest use," or to keep the land as suitable habitat for fish and wildlife. Under the act, conservation easements would continue to be interests in land that are held to keep land in its natural, scenic, open, or wooded condition, or to keep it suitable for fish and wildlife, but an easement could include agricultural use (as agriculture is defined in the act) only to the extent that the agricultural use is consistent with or furthers the purpose of keeping the land in its natural, scenic, open, or wooded condition.

Acquisition of agricultural land and agricultural easements

Overview

(secs. 5301.68, 5301.69, 5301.691, and 5301.692)

The act authorizes the Director of Agriculture, municipal corporations, counties, and townships to purchase or hold agricultural easements. It also explicitly authorizes charitable organizations that are exempt from federal income taxation, described as an exempt organization under federal law, and organized for certain land preservation or protection purposes, to acquire and hold agricultural easements.

Purchase of agricultural easements by the Director

(sec. 5301.691(A), (C)(1), and (E))

Under the act, the Director of Agriculture may purchase agricultural easements in the name of the state using moneys credited to the Agricultural Easement Purchase Fund created by the act (see "***Agricultural Easement Purchase Fund***," below). The easement purchased must be on land that qualifies for the current agricultural use valuation tax reduction when the easement is granted. (The current agricultural use valuation, or "CAUV," law permits agricultural land to be valued for tax purposes on the basis of the income that can be earned by using the land in agriculture rather than on the basis of its market value, which generally is higher.) At least 30 days prior to purchasing an easement, the Director must provide written notice of the intention to do so to the board of county commissioners of the county, and either the legislative authority of the municipal corporation or board of township trustees of the township, in which the affected land is located. If the board of county commissioners, legislative authority, or board of township trustees requests an informational meeting with the Director within 30 days after the notice is provided, the Director must meet with the legislative authority or board to respond to questions and concerns. If an informational meeting is requested timely, the Director is precluded from undertaking the proposed acquisition until after the meeting has been concluded. The act also authorizes the Director to hold an informational meeting on the Director's own initiative prior to purchasing an agricultural easement.

The term of an agricultural easement purchased wholly or in part with money from the Agricultural Easement Purchase Fund must be perpetual and run with the land (that is, the relative rights and duties under the easement must pass to subsequent assignees).

Acquisition by the Director of agricultural real property, easements by gift, devise, or bequest

(sec. 901.21(A) to (D))

The act authorizes the Director of Agriculture to acquire by gift, devise, or bequest real property used predominantly in

agriculture. In addition, it authorizes the Director, by any of those means, or by purchase or lease, to acquire, or acquire the use of, stationary personal property or equipment that is located on land acquired in fee and necessary or appropriate for the use of the land predominantly in agriculture. The Director may do all things necessary or appropriate to retain the use of such real property predominantly in agriculture, including performing any of the activities described in the definition of agriculture or entering into contracts to lease or rent the real property to persons or governmental entities that will use the land predominantly in agriculture. The Director may sell agricultural land acquired in fee, and stationary personal property or equipment, when the Director considers doing so to be necessary or appropriate and on terms that are most advantageous to the state.

The act also specifically authorizes the Director to acquire agricultural easements by gift, devise, or bequest if the easements are on land that qualifies for the CAUV reduction when the easements are granted. Any terms may be included in an easement that are necessary or appropriate to preserve for the grantor any favorable federal tax consequences.

Purchase of agricultural easements by subdivisions

(sec. 5301.691(B)(1), (C), and (E))

Under the act, the legislative authority of a municipal corporation, board of county commissioners, or board of township trustees may purchase agricultural easements in the name of the municipal corporation, county, or township, with money in the general fund that is not required by law or charter to be used for other specified purposes, with money in a special fund for purchasing easements, or with a matching grant from the state's Agricultural Easement Purchase Fund (see below). The easements purchased must be on land that qualifies for the CAUV reduction when the easement is granted.

The term of an agricultural easement purchased wholly or in part with money from the Agricultural Easement Purchase Fund must be perpetual and run with the land. The term of an agricultural easement purchased without the use of any money from the Agricultural Easement Purchase Fund may be perpetual or for a specified period, but this easement also must run with the land. The instrument conveying an agricultural easement for a specified period must include provisions specifying, at a minimum, all of the following: (1) the consideration to be paid for the easement and manner of payment, (2) whether the easement is renewable and, if so, procedures for its renewal, (3) the circumstances under which the easement may be extinguished, and (4) the method for determining the amount of money, if any, due the holder of the easement upon extinguishment and for payment of that amount to the holder.

Acquisition of agricultural easements by political subdivisions by gift, devise, or bequest

(sec. 5301.691(B)(2))

The act authorizes a municipal corporation, county, or township to acquire agricultural easements by gift, devise, or bequest if the easements are on land that qualifies for the CAUV reduction when the easements are granted. Any terms may be included in an easement so acquired that are necessary or appropriate to preserve on behalf of the grantor of the easement the favorable federal tax consequences.

Extinguishment of agricultural conservation easements

(secs. 901.21(D) and 5301.691(A) and (F))

Easements purchased by the Director of Agriculture may be extinguished if an unexpected change in the conditions of or surrounding the land that is subject to the easement makes impossible or impractical the continued use of the land for the purposes described in the agricultural easement, or if the requirements of the easement are extinguished by judicial proceedings. Upon the sale, exchange, or involuntary conversion of the land subject to the easement, the Director must be paid an amount of money that is at least equal to the proportionate value of the easement compared to the total value of the land at the time the easement was acquired. Moneys so received must be credited to the Agricultural Easement Purchase Fund.

Not less than 30 days prior to extinguishing an easement purchased with money from the Fund, the Director must provide written notice of the intention to do so to the board of county commissioners of the county, legislative authority of the municipal corporation, or board of township trustees of the township in which the land is located. The Director must conduct an informational meeting with the affected board or legislative authority if one is requested timely.

An agricultural easement may be extinguished under the circumstances prescribed, and in accordance with the terms and conditions set forth, in the instrument conveying the agricultural easement.

Recording of instruments conveying and extinguishing easements

(secs. 317.08, 317.32, and 5301.691(F) and (G))

The act requires all agricultural easements to be executed and recorded in the same manner as other instruments conveying interests in real property. The act requires that instruments extinguishing agricultural easements also be so executed and recorded. The act provides that promptly after indexing and recording an instrument conveying or extinguishing an agricultural easement, the county recorder must mail, by regular mail, a photocopy of the instrument to the Office of Farmland Preservation in the Department of Agriculture. The photocopy must be accompanied by an invoice for the applicable fee established in the County Recorder Law. The Office must remit the fee to the county recorder promptly after receiving the photocopy and invoice.

Supervision and enforcement of agricultural easements

(sec. 5301.691(D))

Upon acquiring an agricultural easement, the Director, municipal legislative authority, board of county commissioners, or board of township trustees must name an appropriate administrative officer, department, or division to supervise and enforce the easement. A municipal legislative authority or board may enter into a contract with the board of park commissioners of a metropolitan park district, board of park commissioners of a township park district, board of supervisors of a soil and water conservation district, or with a charitable organization to supervise the easement on behalf of the legislative authority or board. The contract may be entered into on such terms as are agreeable to the parties and must specify or prescribe a method for determining the amounts of any payments to be made by the legislative authority or board for the performance of the contract.

Authority to own land and interests in land to retain agricultural land use

(sec. 5301.692)

The act generally authorizes a municipal legislative authority, board of county commissioners, or board of township trustees to hold land or interests in land for the purpose of retaining the use of the land predominantly in agriculture. This power is in addition to a legislative authority's or board's other powers. A legislative authority or board may do all things necessary or appropriate to achieve that purpose, including commercial agriculture, and leasing or renting the land to persons or governmental entities who will use the land predominantly in agriculture.

Acceptance of grants for purchasing easements

(sec. 5301.691(H))

The act authorizes the Director of Agriculture, legislative authority of a municipal corporation, board of county commissioners, or board of township trustees to receive and expend grants from any public or private source for the purpose of purchasing agricultural conservation easements and supervising and enforcing them.

Agricultural Easement Purchase Fund

(secs. 901.21(E) and 901.22(D))

The act creates the Agricultural Easement Purchase Fund in the state treasury. The Fund is to be used by the Director of Agriculture exclusively to purchase agricultural easements in the name of the state and provide matching grants to charitable organizations, municipal corporations, counties, and townships for the purchase of such easements. Moneys in the Fund must be used only to purchase agricultural easements on land that qualifies for the CAUV reduction when the easement is purchased.

Under the act, the Fund must consist of the following: (1) money received by the Director from the sale of agricultural land acquired in fee, and stationary personal property and equipment located on the land that was given, devised, or bequeathed to, or purchased by, the state, (2) money received by the Director due to the extinguishment of agricultural easements acquired by the Director by purchase, gift, devise, or bequest, (3) money received by the Director due to the extinguishment of agricultural easements purchased by charitable organizations, municipal corporations, counties, and townships with the assistance of matching grants provided under the act, (4) gifts, bequests, devises, and contributions received by the Director for the purpose of acquiring such easements, and (5) grants received from public or private sources for the purpose of purchasing such easements.

The act permits the Director to make matching grants from the Fund to charitable organizations, municipal corporations, counties, and townships to assist them in purchasing easements. Application for a matching grant must be made on forms prescribed and provided by the Director. The matching grants must be made in accordance with criteria and procedures established in rules the Director is authorized to adopt (see "***Rulemaking***," below). Instruments conveying easements purchased with matching grant funds, at a minimum, must include the mandatory provisions set forth in the Director's rules.

Rulemaking

(sec. 901.22(A))

Under the act, the Director of Agriculture must adopt rules, in accordance with the Administrative Procedure Act, that do all of the following:

- (1) Establish procedures and eligibility criteria for making matching grants to charitable organizations, municipal corporations, counties, and townships for the purchase of agricultural easements;
- (2) Establish provisions that must be included in the instrument conveying an easement purchased with matching grant funds, including (a) a provision stating that the easement may be extinguished only if an unexpected change in the conditions of or surrounding the land makes impossible or impractical the continued use of the land for the purposes described in the easement, or if the requirements of the easement are extinguished by judicial proceedings, (b) a provision requiring that, upon the sale, exchange, or involuntary conversion of the land, the holder of the easement must be paid an amount of money that is at least equal to the proportionate value of the easement compared to the total value of the land at the time the easement was acquired, and (c) a provision requiring that, upon receipt of the portion of the proceeds of a sale, exchange, or involuntary conversion, the municipal corporation, county, township, or charitable organization remit to the Director an amount of money equal to the percentage of the cost of purchasing the easement it received as a matching grant.
- (3) Any other requirements that the Director considers to be necessary or appropriate to implement or administer the matching grant program and monitor the grants.

Other powers and duties of the Director regarding easements

(sec. 901.22(B), (C), and (E))

The act authorizes the Director of Agriculture to develop guidelines regarding the acquisition of agricultural easements by the Department of Agriculture and the provisions of instruments conveying those easements. The Director may make the guidelines available to public and private entities authorized to acquire and hold agricultural easements. The Director also may provide technical assistance in developing a program for the acquisition and monitoring of agricultural easements to public and private entities authorized to hold such easements. The technical assistance may include reviewing and providing advisory recommendations regarding draft instruments conveying agricultural easements.

The act requires the Director to monitor and evaluate the effectiveness and efficiency of the agricultural easement program in furthering farmland preservation. Annually, the Director must prepare and submit a report to the chairpersons of the House and Senate committees that consider agricultural legislation. In the report, the Director must address the following criteria to determine the effectiveness of the easement program: (1) the number and location of agricultural easements purchased during the preceding year, (2) the number of acres of land preserved for agricultural use, (3) the sums expended by local governments from their general or special funds to purchase easements, and (4) the number and amount of state matching grants awarded for the purchase of easements.

The report must also include, for each county, the following information to determine the program's efficiency: the total number of acres in the county, the number of acres in current agricultural use, the number of acres preserved for agricultural use in the preceding year, and the average cost per acre of land preserved for agricultural use in the preceding year.

Municipal corporation, county, or township property tax for agricultural easements

(sec. 5705.19(QQ))

The act adds as a purpose for which municipal corporations, counties, or townships may levy a property tax, the acquisition of agricultural easements and the supervision and enforcement of them. A tax levied under this provision is outside the ten-mill limitation and, thus, must be approved by the voters within the municipal corporation, county, or township. The tax may be levied for up to five years.

County sales and use tax, bonds for acquiring agricultural easements

Permissive sales and use taxes

(sec. 5739.026(A)(9))

Existing law authorizes a board of county commissioners, subject to voter approval, to levy a sales and use tax of .25% or .5%, or to increase the rate of the tax from .25% to .5%, for any one or a combination of specified purposes that include permanent improvements, operating expenses, 9-1-1 systems, joint recreation facilities, and sports facilities. The act adds

to these purposes (1) providing additional revenue for the acquisition of agricultural easements, (2) paying debt service on bonds issued to finance the purchase of such easements, and (3) supervising and enforcing such easements held by the county.

Issuance of bonds pledging sales and use tax revenues

(secs. 133.60 and 5739.026(C)(2)(d))

The act permits a board of county commissioners to issue bonds and notes for the purpose of acquiring agricultural easements and pledge revenues from a county permissive sales and use tax levied to repay the bonds or notes. The issuance of the bonds and notes is subject to the Uniform Bond Law, except that their maturity cannot extend beyond the expiration of the sales and use tax pledged to their payment. The bonds and notes are not general obligations of the county. All moneys raised through the issuance of the bonds and notes, after payment of the issuance and financing costs, must be used exclusively for the acquisition of agricultural easements.

Exemption from direct debt limit

(sec. 133.07(C)(17))

Under current law, counties cannot have net indebtedness in excess of 1% of the value of taxable property in the county, unless the excess is approved by voters. Even with voter approval, counties may not have total net indebtedness in excess of an amount scaled to the value of taxable property in the county. However, certain types of indebtedness are excluded in calculating compliance with these limits. For the most part, the exclusions are for securities that are repaid from special, nontax sources, such as utility rates or service fees, or from nonproperty tax sources devoted specifically to repayment of the securities.

Under the act, bonds issued for acquiring agricultural easements, and to which county sales and use taxes have been pledged for their repayment, are also exempt from the statutory county debt limits.

Voted bonds for acquiring agricultural conservation easements

(sec. 133.61)

The act authorizes a municipal legislative authority, board of county commissioners, or board of township trustees, with voter approval, to issue general obligation bonds for the purpose of acquiring agricultural easements. The bonds must be issued in accordance with the Uniform Bond Law provision that governs the issuance of voted general obligation bonds by political subdivisions. Debt service on the bonds is to be provided through the levy of a property tax (see "**Municipal corporation, county, or township property tax for agricultural easements**," above) approved by voters as part of the ballot issue approving issuance of the bonds. The tax must be levied at a rate calculated by the county auditor to pay the debt charges on the bonds. Money raised by the issuance of such bonds, after payment of the costs of issuance and financing costs, must be used exclusively for the acquisition of easements.

HISTORY

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