

**As Introduced**

**133rd General Assembly**

**Regular Session**

**2019-2020**

**H. B. No. 43**

**Representative Ingram**

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

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**A BILL**

To amend sections 3313.41, 3318.08, and 5705.10, to 1  
enact new section 3313.411, and to repeal 2  
sections 3313.411, 3313.412, and 3313.413 of the 3  
Revised Code to eliminate the right of first 4  
refusal for certain schools in the acquisition 5  
of school district real property. 6

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

**Section 1.** That sections 3313.41, 3318.08, and 5705.10 of 7  
the Revised Code be amended and new section 3313.411 be enacted 8  
to read as follows: 9

**Sec. 3313.41.** (A) ~~Except as provided in divisions (C),~~ 10  
~~(D), and (F) of this section and in sections 3313.412 and~~ 11  
~~3313.413 of the Revised Code, when~~ When a board of education 12  
decides to dispose of real or personal property that it owns in 13  
its corporate capacity and that exceeds in value ten thousand 14  
dollars, it shall sell the property at public auction, after 15  
giving at least thirty days' notice of the auction by 16  
publication in a newspaper of general circulation in the school 17  
district, by publication as provided in section 7.16 of the 18

Revised Code, or by posting notices in five of the most public 19  
places in the school district in which the property, if it is 20  
real property, is situated, or, if it is personal property, in 21  
the school district of the board of education that owns the 22  
property. The board may offer real property for sale as an 23  
entire tract or in parcels. 24

(B) When the board of education has offered real or 25  
personal property for sale at public auction at least once 26  
pursuant to division (A) of this section, and the property has 27  
not been sold, the board may sell it at a private sale. 28  
Regardless of how it was offered at public auction, at a private 29  
sale, the board shall, as it considers best, sell real property 30  
as an entire tract or in parcels, and personal property in a 31  
single lot or in several lots. 32

(C) If a board of education decides to dispose of real or 33  
personal property that it owns in its corporate capacity and 34  
that exceeds in value ten thousand dollars, it may sell the 35  
property to the adjutant general; to any subdivision or taxing 36  
authority as respectively defined in section 5705.01 of the 37  
Revised Code, township park district, board of park 38  
commissioners established under Chapter 755. of the Revised 39  
Code, or park district established under Chapter 1545. of the 40  
Revised Code; to a wholly or partially tax-supported university, 41  
university branch, or college; to a nonprofit institution of 42  
higher education that has a certificate of authorization under 43  
Chapter 1713. of the Revised Code; to the governing authority of 44  
a chartered nonpublic school; or to the board of trustees of a 45  
school district library, upon such terms as are agreed upon. The 46  
sale of real or personal property to the board of trustees of a 47  
school district library is limited, in the case of real 48  
property, to a school district library within whose boundaries 49

the real property is situated, or, in the case of personal 50  
property, to a school district library whose boundaries lie in 51  
whole or in part within the school district of the selling board 52  
of education. 53

(D) When a board of education decides to trade as a part 54  
or an entire consideration, an item of personal property on the 55  
purchase price of an item of similar personal property, it may 56  
trade the same upon such terms as are agreed upon by the parties 57  
to the trade. 58

(E) The president and the treasurer of the board of 59  
education shall execute and deliver deeds or other necessary 60  
instruments of conveyance to complete any sale or trade under 61  
this section. 62

(F) When a board of education has identified a parcel of 63  
real property that it determines is needed for school purposes, 64  
the board may, upon a majority vote of the members of the board, 65  
acquire that property by exchanging real property that the board 66  
owns in its corporate capacity for the identified real property 67  
or by using real property that the board owns in its corporate 68  
capacity as part or an entire consideration for the purchase 69  
price of the identified real property. Any exchange or 70  
acquisition made pursuant to this division shall be made by a 71  
conveyance executed by the president and the treasurer of the 72  
board. 73

(G) When a school district board of education has property 74  
that the board, by resolution, finds is not needed for school 75  
district use, is obsolete, or is unfit for the use for which it 76  
was acquired, the board may donate that property in accordance 77  
with this division if the fair market value of the property is, 78  
in the opinion of the board, two thousand five hundred dollars 79

or less. 80

The property may be donated to an eligible nonprofit 81  
organization that is located in this state and is exempt from 82  
federal income taxation pursuant to 26 U.S.C. 501(a) and (c)(3). 83  
Before donating any property under this division, the board 84  
shall adopt a resolution expressing its intent to make unneeded, 85  
obsolete, or unfit-for-use school district property available to 86  
these organizations. The resolution shall include guidelines and 87  
procedures the board considers to be necessary to implement the 88  
donation program and shall indicate whether the school district 89  
will conduct the donation program or the board will contract 90  
with a representative to conduct it. If a representative is 91  
known when the resolution is adopted, the resolution shall 92  
provide contact information such as the representative's name, 93  
address, and telephone number. 94

The resolution shall include within its procedures a 95  
requirement that any nonprofit organization desiring to obtain 96  
donated property under this division shall submit a written 97  
notice to the board or its representative. The written notice 98  
shall include evidence that the organization is a nonprofit 99  
organization that is located in this state and is exempt from 100  
federal income taxation pursuant to 26 U.S.C. 501(a) and (c)(3); 101  
a description of the organization's primary purpose; a 102  
description of the type or types of property the organization 103  
needs; and the name, address, and telephone number of a person 104  
designated by the organization's governing board to receive 105  
donated property and to serve as its agent. 106

After adoption of the resolution, the board shall publish, 107  
in a newspaper of general circulation in the school district or 108  
as provided in section 7.16 of the Revised Code, notice of its 109

intent to donate unneeded, obsolete, or unfit-for-use school 110  
district property to eligible nonprofit organizations. The 111  
notice shall include a summary of the information provided in 112  
the resolution and shall be published twice. The second notice 113  
shall be published not less than ten nor more than twenty days 114  
after the previous notice. A similar notice also shall be posted 115  
continually in the board's office. If the school district 116  
maintains a web site on the internet, the notice shall be posted 117  
continually at that web site. 118

The board or its representatives shall maintain a list of 119  
all nonprofit organizations that notify the board or its 120  
representative of their desire to obtain donated property under 121  
this division and that the board or its representative 122  
determines to be eligible, in accordance with the requirements 123  
set forth in this section and in the donation program's 124  
guidelines and procedures, to receive donated property. 125

The board or its representative also shall maintain a list 126  
of all school district property the board finds to be unneeded, 127  
obsolete, or unfit for use and to be available for donation 128  
under this division. The list shall be posted continually in a 129  
conspicuous location in the board's office, and, if the school 130  
district maintains a web site on the internet, the list shall be 131  
posted continually at that web site. An item of property on the 132  
list shall be donated to the eligible nonprofit organization 133  
that first declares to the board or its representative its 134  
desire to obtain the item unless the board previously has 135  
established, by resolution, a list of eligible nonprofit 136  
organizations that shall be given priority with respect to the 137  
item's donation. Priority may be given on the basis that the 138  
purposes of a nonprofit organization have a direct relationship 139  
to specific school district purposes of programs provided or 140

administered by the board. A resolution giving priority to 141  
certain nonprofit organizations with respect to the donation of 142  
an item of property shall specify the reasons why the 143  
organizations are given that priority. 144

Members of the board shall consult with the Ohio ethics 145  
commission, and comply with Chapters 102. and 2921. of the 146  
Revised Code, with respect to any donation under this division 147  
to a nonprofit organization of which a board member, any member 148  
of a board member's family, or any business associate of a board 149  
member is a trustee, officer, board member, or employee. 150

Sec. 3313.411. (A) Except as provided in division (B) of 151  
this section, the governing authority of a community school, the 152  
board of trustees of a college-preparatory boarding school, or 153  
the governing body of a STEM school shall not sell any property 154  
purchased under division (B) of section 3313.411 of the Revised 155  
Code as it existed prior to the effective date of this section 156  
within five years of purchasing that property. 157

(B) The governing authority, board of trustees, or 158  
governing body may sell a property purchased under division (B) 159  
of section 3313.411 of the Revised Code as it existed prior to 160  
the effective date of this section within five years of the 161  
purchase, only if the governing authority, board of trustees, or 162  
governing body sells or transfers that property to another 163  
governing authority, board of trustees, or governing body. 164

**Sec. 3318.08.** Except in the case of a joint vocational 165  
school district that receives assistance under sections 3318.40 166  
to 3318.45 of the Revised Code, if the requisite favorable vote 167  
on the election is obtained, or if the school district board has 168  
resolved to apply the proceeds of a property tax levy or the 169  
proceeds of an income tax, or a combination of proceeds from 170

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 202  
of the required level of indebtedness for the preceding year. In 203  
the event that a first installment of bond anticipation notes is 204  
issued, the school district board shall, as soon as practicable 205  
after the county treasurer of each county in which the school 206  
district is located has commenced the collection of taxes on the 207  
general duplicate of real and public utility property for the 208  
year in which the controlling board approved the project, 209  
authorize the issuance of a second and final installment of bond 210  
anticipation notes or a first and final issue of bonds. 211

The combined value of the first and second installment of 212  
bond anticipation notes or the value of the first and final 213  
issue of bonds shall be equal to the school district's portion 214  
of the basic project cost. The proceeds of any such bonds shall 215  
be used first to retire any bond anticipation notes. Otherwise, 216  
the proceeds of such bonds and of any bond anticipation notes, 217  
except the premium and accrued interest thereon, shall be 218  
deposited in the school district's project construction fund. In 219  
determining the amount of net bonded indebtedness for the 220  
purpose of fixing the amount of an issue of either bonds or bond 221  
anticipation notes, gross indebtedness shall be reduced by 222  
moneys in the bond retirement fund only to the extent of the 223  
moneys therein on the first day of the year preceding the year 224  
in which the controlling board approved the project. Should 225  
there be a decrease in the tax valuation of the school district 226  
so that the amount of indebtedness that can be incurred on the 227  
tax duplicates for the year in which the controlling board 228  
approved the project is less than the amount of the first 229  
installment of bond anticipation notes, there shall be paid from 230  
the school district's project construction fund to the school 231  
district's bond retirement fund to be applied against such notes 232

an amount sufficient to cause the net bonded indebtedness of the 233  
school district, as of the first day of the year following the 234  
year in which the controlling board approved the project, to be 235  
within five thousand dollars of the required level of 236  
indebtedness for the year in which the controlling board 237  
approved the project. The maximum amount of indebtedness to be 238  
incurred by any school district board as its share of the cost 239  
of the project is either an amount that will cause its net 240  
bonded indebtedness, as of the first day of the year following 241  
the year in which the controlling board approved the project, to 242  
be within five thousand dollars of the required level of 243  
indebtedness, or an amount equal to the required percentage of 244  
the basic project costs, whichever is greater. All bonds and 245  
bond anticipation notes shall be issued in accordance with 246  
Chapter 133. of the Revised Code, and notes may be renewed as 247  
provided in section 133.22 of the Revised Code. 248

(B) The transfer of such funds of the school district 249  
board available for the project, together with the proceeds of 250  
the sale of the bonds or notes, except premium, accrued 251  
interest, and interest included in the amount of the issue, to 252  
the school district's project construction fund; 253

(C) For all school districts except joint vocational 254  
school districts that receive assistance under sections 3318.40 255  
to 3318.45 of the Revised Code, the following provisions as 256  
applicable: 257

(1) If section 3318.052 of the Revised Code applies, the 258  
earmarking of the proceeds of a tax levied under section 5705.21 259  
of the Revised Code for general permanent improvements or under 260  
section 5705.218 of the Revised Code for the purpose of 261  
permanent improvements, or the proceeds of a school district 262

income tax levied under Chapter 5748. of the Revised Code, or 263  
the proceeds from a combination of those two taxes, in an amount 264  
to pay all or part of the service charges on bonds issued to pay 265  
the school district portion of the project and an amount 266  
equivalent to all or part of the tax required under division (B) 267  
of section 3318.05 of the Revised Code; 268

(2) If section 3318.052 of the Revised Code does not 269  
apply, one of the following: 270

(a) The levy of the tax authorized at the election for the 271  
payment of maintenance costs, as specified in division (B) of 272  
section 3318.05 of the Revised Code; 273

(b) If the school district electors have approved a 274  
continuing tax for general permanent improvements under section 275  
5705.21 of the Revised Code and that tax can be used for 276  
maintenance, the earmarking of an amount of the proceeds from 277  
such tax for maintenance of classroom facilities as specified in 278  
division (B) of section 3318.05 of the Revised Code; 279

(c) If, in lieu of the tax otherwise required under 280  
division (B) of section 3318.05 of the Revised Code, the 281  
commission has approved the transfer of money to the maintenance 282  
fund in accordance with section 3318.051 of the Revised Code, a 283  
requirement that the district board comply with the provisions 284  
of that section. The district board may rescind the provision 285  
prescribed under division (C) (2) (c) of this section only so long 286  
as the electors of the district have approved, in accordance 287  
with section 3318.063 of the Revised Code, the levy of a tax for 288  
the maintenance of the classroom facilities acquired under the 289  
district's project and that levy continues to be collected as 290  
approved by the electors. 291

(D) For joint vocational school districts that receive	292
assistance under sections 3318.40 to 3318.45 of the Revised	293
Code, provision for deposit of school district moneys dedicated	294
to maintenance of the classroom facilities acquired under those	295
sections as prescribed in section 3318.43 of the Revised Code;	296
(E) Dedication of any local donated contribution as	297
provided for under section 3318.084 of the Revised Code,	298
including a schedule for depositing such moneys applied as an	299
offset of the district's obligation to levy the tax described in	300
division (B) of section 3318.05 of the Revised Code as required	301
under division (D) (2) of section 3318.084 of the Revised Code;	302
(F) Ownership of or interest in the project during the	303
period of construction, which shall be divided between the	304
commission and the school district board in proportion to their	305
respective contributions to the school district's project	306
construction fund;	307
(G) Maintenance of the state's interest in the project	308
until any obligations issued for the project under section	309
3318.26 of the Revised Code are no longer outstanding;	310
(H) The insurance of the project by the school district	311
from the time there is an insurable interest therein and so long	312
as the state retains any ownership or interest in the project	313
pursuant to division (F) of this section, in such amounts and	314
against such risks as the commission shall require; provided,	315
that the cost of any required insurance until the project is	316
completed shall be a part of the basic project cost;	317
(I) The certification by the director of budget and	318
management that funds are available and have been set aside to	319
meet the state's share of the basic project cost as approved by	320

the controlling board pursuant to either section 3318.04 or 321  
division (B) (1) of section 3318.41 of the Revised Code; 322

(J) Authorization of the school district board to 323  
advertise for and receive construction bids for the project, for 324  
and on behalf of the commission, and to award contracts in the 325  
name of the state subject to approval by the commission; 326

(K) Provisions for the disbursement of moneys from the 327  
school district's project account upon issuance by the 328  
commission or the commission's designated representative of 329  
vouchers for work done to be certified to the commission by the 330  
treasurer of the school district board; 331

(L) Disposal of any balance left in the school district's 332  
project construction fund upon completion of the project; 333

(M) Limitations upon use of the project or any part of it 334  
so long as any obligations issued to finance the project under 335  
section 3318.26 of the Revised Code are outstanding; 336

(N) Provision for vesting the state's interest in the 337  
project to the school district board when the obligations issued 338  
to finance the project under section 3318.26 of the Revised Code 339  
are outstanding; 340

(O) Provision for deposit of an executed copy of the 341  
agreement in the office of the commission; 342

(P) Provision for termination of the contract and release 343  
of the funds encumbered at the time of the conditional approval, 344  
if the proceeds of the sale of the bonds of the school district 345  
board are not paid into the school district's project 346  
construction fund and if bids for the construction of the 347  
project have not been taken within such period after the 348  
execution of the agreement as may be fixed by the commission; 349

(Q) Provision for the school district to maintain the 350  
project in accordance with a plan approved by the commission; 351

(R) Provision that all state funds reserved and encumbered 352  
to pay the state share of the cost of the project and the funds 353  
provided by the school district to pay for its share of the 354  
project cost, including the respective shares of the cost of a 355  
segment if the project is divided into segments, be spent on the 356  
construction and acquisition of the project or segment 357  
simultaneously in proportion to the state's and the school 358  
district's respective shares of that basic project cost as 359  
determined under section 3318.032 of the Revised Code or, if the 360  
district is a joint vocational school district, under section 361  
3318.42 of the Revised Code. However, if the school district 362  
certifies to the commission that expenditure by the school 363  
district is necessary to maintain the federal tax status or tax- 364  
exempt status of notes or bonds issued by the school district to 365  
pay for its share of the project cost or to comply with 366  
applicable temporary investment periods or spending exceptions 367  
to rebate as provided for under federal law in regard to those 368  
notes or bonds, the school district may commit to spend, or 369  
spend, a greater portion of the funds it provides during any 370  
specific period than would otherwise be required under this 371  
division. 372

(S) A provision stipulating that the commission may 373  
prohibit the district from proceeding with any project if the 374  
commission determines that the site is not suitable for 375  
construction purposes. The commission may perform soil tests in 376  
its determination of whether a site is appropriate for 377  
construction purposes. 378

(T) A provision stipulating that, unless otherwise 379

authorized by the commission, any contingency reserve portion of 380  
the construction budget prescribed by the commission shall be 381  
used only to pay costs resulting from unforeseen job conditions, 382  
to comply with rulings regarding building and other codes, to 383  
pay costs related to design clarifications or corrections to 384  
contract documents, and to pay the costs of settlements or 385  
judgments related to the project as provided under section 386  
3318.086 of the Revised Code; 387

(U) A provision stipulating that for continued release of 388  
project funds the school district board shall comply with 389  
~~sections~~ section 3313.41, ~~3313.411, and 3313.413~~ of the Revised 390  
Code throughout the project and shall notify the department of 391  
education and the Ohio community school association when the 392  
board plans to dispose of facilities by sale under that section; 393

(V) A provision stipulating that the commission shall not 394  
approve a contract for demolition of a facility until the school 395  
district board has complied with ~~sections~~ section 3313.41, ~~396~~  
~~3313.411, and 3313.413~~ of the Revised Code relative to that 397  
facility, unless demolition of that facility is to clear a site 398  
for construction of a replacement facility included in the 399  
district's project; 400

(W) A requirement for the school district to adhere to a 401  
facilities maintenance plan approved by the commission. 402

**Sec. 5705.10.** (A) All revenue derived from the general 403  
levy for current expense within the ten-mill limitation, from 404  
any general levy for current expense authorized by vote in 405  
excess of the ten-mill limitation, and from sources other than 406  
the general property tax, unless its use for a particular 407  
purpose is prescribed by law, shall be paid into the general 408  
fund. 409

(B) All revenue derived from general or special levies for 410  
debt charges, whether within or in excess of the ten-mill 411  
limitation, which is levied for the debt charges on serial 412  
bonds, notes, or certificates of indebtedness having a life less 413  
than five years, shall be paid into the bond retirement fund; 414  
and all such revenue which is levied for the debt charges on all 415  
other bonds, notes, or certificates of indebtedness shall be 416  
paid into the sinking fund. 417

(C) All revenue derived from a special levy shall be 418  
credited to a special fund for the purpose for which the levy 419  
was made. 420

(D) Except as otherwise provided by resolution adopted 421  
pursuant to section 3315.01 of the Revised Code, all revenue 422  
derived from a source other than the general property tax and 423  
which the law prescribes shall be used for a particular purpose, 424  
shall be paid into a special fund for such purpose. Except as 425  
otherwise provided by resolution adopted pursuant to section 426  
3315.01 of the Revised Code or as otherwise provided by section 427  
3315.40 of the Revised Code, all revenue derived from a source 428  
other than the general property tax, for which the law does not 429  
prescribe use for a particular purpose, including interest 430  
earned on the principal of any special fund, regardless of the 431  
source or purpose of the principal, shall be paid into the 432  
general fund. 433

(E) All proceeds from the sale of public obligations or 434  
fractionalized interests in public obligations as defined in 435  
section 133.01 of the Revised Code, except premium and accrued 436  
interest, shall be paid into a special fund for the purpose of 437  
such issue, and any interest and other income earned on money in 438  
such special fund may be used for the purposes for which the 439

indebtedness was authorized or may be credited to the general 440  
fund or other fund or account as the taxing authority authorizes 441  
and used for the purposes of that fund or account. The premium 442  
and accrued interest received from such sale shall be paid into 443  
the sinking fund or the bond retirement fund of the subdivision. 444

(F) Except as provided in divisions (G) and (H) of this 445  
section, if a permanent improvement of the subdivision is sold, 446  
the amount received from the sale shall be paid into the sinking 447  
fund, the bond retirement fund, or a special fund for the 448  
construction or acquisition of permanent improvements; provided 449  
that the proceeds from the sale of a public utility shall be 450  
paid into the sinking fund or bond retirement fund to the extent 451  
necessary to provide for the retirement of the outstanding 452  
indebtedness incurred in the construction or acquisition of such 453  
utility. Proceeds from the sale of property other than a 454  
permanent improvement shall be paid into the fund from which 455  
such property was acquired or is maintained or, if there is no 456  
such fund, into the general fund. 457

(G) A township that has a population greater than fifteen 458  
thousand according to the most recent federal decennial census 459  
and that has declared one or more improvements in the township 460  
to be a public purpose under section 5709.73 of the Revised Code 461  
may pay proceeds from the sale of a permanent improvement of the 462  
township into its general fund if both of the following 463  
conditions are satisfied: 464

(1) The township fiscal officer determines that all 465  
foreseeable public infrastructure improvements, as defined in 466  
section 5709.40 of the Revised Code, to be made in the township 467  
in the ten years immediately following the date the permanent 468  
improvement is sold will have been financed through resolutions 469

adopted under section 5709.73 of the Revised Code on or before 470  
the date of the sale. The fiscal officer shall provide written 471  
certification of this determination for the township's records. 472

(2) The permanent improvement being sold was financed 473  
entirely from moneys in the township's general fund. 474

(H) If a board of education of a school district disposes 475  
of real property under section 3313.41, ~~3313.411, or 3313.413~~ of 476  
the Revised Code, the proceeds received on or after September 477  
29, 2013, from the sale shall be used for either of the 478  
following purposes: 479

(1) The retirement of any debt that was incurred by the 480  
district with respect to that real property. Proceeds in excess 481  
of the funds necessary to retire that debt may be paid into the 482  
school district's capital and maintenance fund and used only to 483  
pay for the costs of nonoperating capital expenses related to 484  
technology infrastructure and equipment to be used for 485  
instruction and assessment. 486

(2) Payment into a special fund for the construction or 487  
acquisition of permanent improvements. 488

(I) Money paid into any fund shall be used only for the 489  
purposes for which such fund is established. 490

**Section 2.** That existing sections 3313.41, 3318.08, and 491  
5705.10 and sections 3313.411, 3313.412, and 3313.413 of the 492  
Revised Code are hereby repealed. 493