



COUNTY ADVISORY BULLETIN

CAB

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Senate Bill 223 of the 122nd General Assembly Authorizes Creation of Agricultural Easements; Allows Counties to Purchase Easements with Property Tax, Sales Tax or Bond Revenues; Creates State Fund to Allow Director of Agriculture to Provide Grants for Purchase of Easements

Effective Date: April 5, 1999.

Revised Code Sections Affected: 133.07, 317.08, 317.32, 5301.67, 5301.68, 5301.69, 5705.19, 5737.026 (amended) / 133.60, 133.61, 901.21, 901.22, 5301.691 and 5301.692 (enacted).

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OVERVIEW

Amended Substitute Senate Bill 223 (SB 223) of the 122nd General Assembly, which became effective on April 5, 1999, changes state law to authorize the acquisition of agricultural easements by a board of county commissioners ("county"), a board of township trustees ("townships"), the legislative authority of a municipal corporation ("municipal corporation"), the state Director of Agriculture ("director") and a charitable organization ("organization") dedicated to the preservation and protection of land.

The bill was enacted to provide specific statutory authority for these entities to acquire and

hold easements to preserve the agricultural use of land. Concern had arisen in recent years that the law authorizing these entities to acquire and hold conservation easements did not specifically permit them to acquire and hold agricultural easements.

With the passage of SB 223, the Ohio Revised Code (ORC) now contains separate definitions for conservation easements and agricultural easements. Holders of conservation easements are authorized to use the land for agriculture only when agricultural use is consistent with and furthers the purpose of retaining the land 1) in a natural, scenic, open or wooded condition or 2) as a suitable habitat for fish, plants, or wildlife. ORC 5301.67 (A). Holders of agricultural easements have broader authority to retain the use of the land “predominantly in agriculture.” ORC 5301.67 (C).

Under provisions of SB 223, landowners may grant agricultural easements to counties, townships, municipal corporations, the director, or organizations only for land that is valued for purposes of real property taxation at its current agricultural use valuation (CAUV) at the time the easement is granted.

SB 223 authorizes a county to take the following actions:

1. Purchase agricultural easements with money from the county general fund, a special fund for purchasing easements, or with matching grant money from the state’s agricultural easement purchase fund (AEPF).

SB 223 also authorizes townships, municipal corporations, the director and organizations to purchase agricultural easements. The purchasing provisions are described in Section 1 below.

2. Acquire agricultural easements by gift, devise, bequest as well as by purchase. This provision is described in Section 2 below.
3. Name an officer, department or division to supervise and enforce any agricultural easement it may purchase or otherwise acquire. This provision is described in Section 3 below.
4. Extinguish any agricultural easement it may acquire, in accordance with the terms and conditions set forth in the contract conveying the easement and in accordance with the provisions of SB 223. This provision is described in Section 4 below.
5. Finance the purchase of agricultural easements by a number of methods, including:
 - Receiving and spending matching grant money from the state’s AEPF, in accordance with procedures and eligibility criteria

established by the director.

- Levying a property tax, for up to five years with voter approval, for the purpose of acquiring, supervising or enforcing agricultural easements.
- Levying a sales and use tax, with voter approval, to raise revenue to acquire agricultural easements by debt service on bonds issued to finance those purchases, or to supervise or enforce any agricultural easements held by the county.
- Issuing revenue bonds and notes for the purpose of acquiring easements, with repayment pledged with sales and use tax revenues. These bonds are exempt from the statutory county debt limits.
- Issuing general obligation bonds, with voter approval, for the sole purpose of acquiring agricultural easements. Debt service on the bonds would be financed by the levy of a voter - approved property tax.

The financing provisions are described in Section 5 below.

6. SB 223 also imposes a number of additional duties on the director. These duties are listed in Section 6 below.
7. SB 223 raises a number of questions and concerns of interest to counties. Attached to this CAB is a series of questions and answers on agricultural easements and SB 223.

1. PURCHASING AGRICULTURAL EASEMENTS - ORC 5301.69 (B) (1), (C) AND (E)

Counties, Townships, Municipal Corporations

A county is authorized under SB 223 to purchase agricultural easements in the name of the county. To purchase an easement, a county may use money from its general fund that is not required by law or charter to be used for another specified purpose. A county also may use money from a special county fund created for the purpose of purchasing agricultural easements or matching grant money received from the director and the AEPF. ORC 5301.69 (B) (1).

A municipal corporation and a township also are authorized under SB 223 to purchase agricultural easements under the same terms and conditions as a county.

An agricultural easement purchased by a county, township or municipal corporation

without the use of money from the state's agricultural easement purchase fund may be perpetual or may be for a specified period of time. The easement also must "run with the land" - that is, it must be transferred to any new owner.

An agricultural easement purchased wholly or in part by a county, township or municipal corporation with money from the AEPF must be perpetual and must run with the land. ORC 5301.691 (C) (1).

A contract for an agricultural easement purchased by a county, township or municipal corporation for a specified period of time must at a minimum include provisions specifying:

- 1) The price or other consideration to be paid by the county, township or municipal corporation for the agricultural easement, as well as the manner of payment;
- 2) Whether the agricultural easement is renewable, and, if so, the procedures for renewal;
- 3) The circumstances under which the agricultural easement may be extinguished; and
- 4) The method for determining the amount of money, if any, that will be due to the county, township or municipal corporation upon extinguishment. ORC 5301.691 (C) (2).

Director of Agriculture

SB 223 also authorizes the director of agriculture to purchase agricultural easements in the name of the state. These purchases must be made with moneys credited to the agricultural easement purchase fund (AEPF) created in the bill in ORC 901.21. Agricultural easements purchased by the director with moneys from the AEPF must be perpetual and must run with the land.

At least 30 days before purchasing an agricultural easement, the director must provide written notice of its intention to purchase to the county and either the township or the municipal corporation in which the land is located. ORC 5301.691 (A) (2).

If any notified county, township or municipal corporation requests an informational meeting within 30 days of receiving notice, the director must meet with the entity requesting the meeting. The director cannot proceed with any proposed purchase of an agricultural easement until after the meeting is over. ORC 5301.961 (A) (1) (2). The director also may initiate a meeting without being asked to do so.

Charitable Organizations

SB 223 also authorizes certain charitable organizations to acquire and hold agricultural

easements. These organizations must be exempt from federal taxation, described as an exempt organization, and organized for land preservation or protection purposes. ORC 5301.68, 5301.69.

2. ACQUIRING AGRICULTURAL EASEMENTS BY GIFT, DEVISE OR BEQUEST - ORC 5301.691 (B) (2).

SB 223 authorizes a county, township, municipal corporation, organization or the director to acquire easements by gift, devise or bequest. Like an easement acquired by purchase, an easement acquired by gift, devise or bequest must be on land that qualifies for the CAUV reduction at the time it is granted by the owner.

3. SUPERVISING AND ENFORCING AGRICULTURAL EASEMENTS - ORC 5301.691 (D)

After a county acquires an agricultural easement, it must name an appropriate administrative officer, department or division to supervise and enforce the easement. This duty also applies to the director, a township and a municipal corporation.

A county may contract with a board of park commissioners of a metropolitan or township park district or a board of supervisors of a soil and water conservation district having jurisdiction in the county, or with a charitable organization to supervise the agricultural easement on behalf of the county. The contract must specify a method for determining the amounts of money, if any, that will be paid by the county as the holder of the easement to the supervising entity.

4. EXTINGUISHING AGRICULTURAL EASEMENTS - ORC 5301.691 (F)

A county that acquires an agricultural easement under the authority of SB 223 also may extinguish the easement if certain conditions are met. Municipal corporations, townships, organizations and the director also are granted the authority to extinguish agricultural easements.

A county may extinguish an agricultural easement in two situations: 1) if an unexpected change in the condition on the land or surrounding the land make it impossible or impractical to continue to use the land for the purposes described in the easement; or 2) if the requirements of the easement are extinguished by judicial proceedings.

When extinguishing an agricultural easement, a county also must adhere to any terms and conditions of the contract that conveyed the easement. Any contract that extinguishes an agricultural easement must be executed and recorded in the same manner as any other contract that conveys or terminates an interest in real property. ORC 5301.691 (F).

In the case of an agricultural easement held by the director and purchased with monies from the AEPF, the director must notify a county, municipal corporation or township in which the land is located at least 30 days before extinguishment. The director must also conduct an informational meeting with the affected county, municipal corporation or township if one is requested. ORC 5301.691 (A) (2).

5. FINANCING THE ACQUISITION OF AGRICULTURAL EASEMENTS

SB 223 provides a number of methods by which revenue may be raised by counties and other entities for the purchase of agricultural easements.

A county may purchase an agricultural easement with a matching grant from the state's AEPF, with money in the county general fund that is not required by law or charter to be used for another specified purpose, or with money in a special fund for purchasing easements.

To raise money to acquire an agricultural easement, a county may impose a voter-approved property or sales tax and may issue revenue or general obligation bonds. The bill also authorizes a county to receive and expend grants from any public or private source for the purpose of purchasing, supervising and enforcing an agricultural easement.

Matching Grants - ORC 901.22 (A)

A county may use matching grants provided by the director from the AEPF to acquire agricultural easements. Any easement purchased by a county with these matching grants must be in accordance with criteria and procedures established by the director.

Any instrument that conveys an agricultural easement purchased wholly or in part with money from the AEPF must include the provisions incorporated into SB 223 in ORC 901.22 (A) (2).

These provisions require:

(1) that an agricultural easement may be extinguished only in two circumstances. The first circumstance is if an unexpected change in the conditions of the land --- or the conditions surrounding the land — makes it impossible or impractical to continue using the land for the purposes described in the easement. The second circumstance is if the requirements of the agricultural easement are extinguished by judicial proceedings.

(2) that a county or other holder of an agricultural easement must be paid money whenever the land subject to the easement is sold, exchanged or passed by involuntary conversion. The amount of money paid must be “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.”

(3) that a county or other holder of an agricultural easement must return a percentage of any money it receives from a sale of land to the director. The percentage returned must be equal to the percentage of the easement purchase price that was financed by the director through the state matching grant program.

Property Tax Revenue - ORC 5705.19 (QQ)

SB 223 authorizes a county, as well as a township or municipal corporation, to levy a property tax for the purposes of acquiring, supervising or enforcing an agricultural easement. Any property tax proposed for this purpose is outside the ten-mill limitation and must be approved by voters. The property tax may be levied for up to five years.

Sales and Use Tax Revenue and Revenue Bonds - ORC 5739.026 (A) (9), 133.60 and 5739.026 (C) (2) (d)

SB 223 authorizes counties to levy a sales and use tax for the purposes of providing revenue to acquire agricultural easements, paying debt service on bonds issued to finance the purchase of easements or providing revenue for the cost of supervising or enforcing an agricultural easement held by the county. This sales and use tax must be approved by voters.

The bill authorizes a county to help issue bonds and notes for the purpose of acquiring easements and to pledge sales and use tax revenues for repayment of the bonds or notes.

The issuance of these bonds and notes is subject to the provisions of the state's uniform bond law (ORC Chapter 133), except that the maturity periods cannot extend beyond the expiration of the sales and use tax revenue pledged to their repayment. These bonds and notes are not general obligations of the county. All moneys raised must be used exclusively for the acquisition, supervision or enforcement of easements, after the payment of issuing and financing costs.

Bonds issued by a county for the purpose of acquiring easements, and to which sales and use tax revenues have been pledged for repayment, are exempt from the statutory county debt limits in the ORC.

General Obligation Bonds - ORC 133.61

SB 223 authorizes a county, as well as a municipal corporation or township, to issue general obligation bonds, with voter approval, for the exclusive purpose of acquiring agricultural easements. These bonds must be issued in accordance with the provisions of the uniform bond law that governs the issuance of voted general obligation bonds by political subdivisions. Debt service on these bonds is provided through the levy of a property tax.

6. ADDITIONAL DUTIES OF THE DIRECTOR OF AGRICULTURE ORC 901.22 (B) (C) AND (E)

In addition to the establishing procedures and criteria for the matching grant program, the director is required to monitor the effectiveness of the easement program in furthering farmland preservation and submit an annual report on that subject to the Ohio House of Representatives and the Ohio Senate.

The report must include the following information to determine the effectiveness of the agricultural easement program: 1) the number of agricultural easements purchased during the preceding year; 2) the location of these easements; 3) the amount of local government monies used by counties, townships and municipalities to purchase agricultural easements; and 5) the number and amount of state matching grants given to purchase agricultural easements.

The report must also include the following information on each Ohio county: 1) 2) the total number of acres in the county, 3) the number of acres in current agricultural use, 4) the number of acres preserved for agricultural use in the preceding year, and 5) the average cost per acre of land preserved for agricultural use in the preceding year.

SB 223 authorizes, but does not require, the director to provide technical assistance to counties, townships, municipal corporations or organizations that are developing a program to acquire agricultural easements.