



Purchase of Real Property From School Districts

**AICUO Issue Brief
June 26, 2012**

Issue Summary

On June 25, 2012, Gov. John Kasich signed Senate Bill 316, an omnibus education measure that included one important provision for the state's independent higher education sector. Effective Sept. 26, 2012, independent colleges may purchase real property from school districts on an equal footing with public colleges and universities.

Background

After an unsuccessful initial attempt to include the "sale of real property" language in last spring's biennial budget, AICUO approached Rep. Jim Butler (R – Oakwood), a member of the Ohio House Education Committee, to sponsor a bill (HB 375) that would allow independent colleges to purchase real or personal property that exceeds \$10,000 being sold by school districts under the same favorable terms as public institutions and other entities.

Following a December committee hearing at which AICUO testified, and subsequent floor consideration, the bill passed the House in April with broad bipartisan support (77-17). Weeks later it passed unanimously from the Senate education committee but saw a tangentially related "rider" amendment before the bill passed the Senate by a vote of 27-4. To avoid enactment of the rider, the Ohio House incorporated the original language of HB 375 into SB 316, the education mid-biennial review legislation. Both chambers passed the bill on June 13, and it was signed yesterday by the governor.

Purchasing Procedure

Ohio Revised Code section 3313.41 provides a preference for certain government entities and charities when local school districts decide to sell real property valued at over \$10,000. Entities purchasing property under the preference are eligible for streamlined acquisition procedures. O.R.C. §3313.41 was amended most recently in last year's biennial budget bill to create a super-preference for charter schools among entities with preferences.

As then codified, the law provided that, "when a school district board of education decides to dispose of real or personal property [that exceeds \$10,000 in value], it shall sell the property at private auction." (O.R.C. §3313.41(A)). However, the district must first "offer that property for sale to the governing authorities of [a start-up charter school]." O.R.C. §3313.41(G) If no charter schools are interested after sixty days, a codified list of entities may then vie to purchase the property for the price and terms agreed upon by participating parties. According to §3313.41(C), effective this September, that list includes:

- the adjutant general;
- any subdivision or taxing authority;
- O.R.C.-defined park districts;
- a wholly-or partially tax-supported university/college or branch;
- the board of trustees of a school district library within the property's boundaries;
- **a non-profit institution of higher education.**

Only after this list of entities declines purchase of the property does it go to public auction.

The procedures for purchasing the property are greatly streamlined for the preferred purchasers. The law provides only that the sale occur "upon such terms as are agreed upon." O.R.C. §3313.41(C). In other words, the sale may occur below fair market value or with other agreed upon stipulations, such as occasional use of the former school property or utilization of college programs by students and employees of the district.

The formal means of identifying properties that are for sale exists in O.R.C. §3313.41(A): "after giving at least thirty days' notice of the auction by publication in a newspaper of general circulation in the school district . . . 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."

Separate provisions further bind public colleges if they utilize state capital-budget funds. Under O.R.C. §333.071 state universities using capital funds for purchases under O.R.C. §3313.41(C) must receive approval from the chancellor and the Ohio Board of Regents. Further, "no state appropriation for capital improvements shall be released by the controlling board for the purchase of land or buildings from any organization or corporation which has been established to benefit or assist the institution, except that such releases may be made if the land is to be used for a currently state-financed improvement." These provisions do not apply to independent colleges and universities.