Linda S. Crawford *Legislative Service Commission*

Sub. S.B. 295*

123rd General Assembly
(As Reported by S. Highways & Transportation)

Sen. Oelslager

BILL SUMMARY

- Establishes $20,000, rather than $5,000, as the maximum value unneeded real property of the Department of Transportation (ODOT) may have when the Director offers the property to the abutting owner through a private sale.
- Allows the Director to offer to exchange unneeded ODOT property within a project corridor for other property ODOT needs to acquire.
- Consolidates the authority of the Director of Transportation to sell unneeded property into one section of codified law.
- Authorizes the Director to purchase or appropriate property for park and ride facilities, and park and carpool or vanpool facilities.
- Exempts from competitive bidding requirements a change order or extra work contract that exceeds 5% of the value of a construction contract, but results in a change of $25,000 or less.
- Authorizes the Director to include an arbitration clause in any construction contract.
- Replaces the notice and hearing requirements in connection with highway projects with a requirement that the Director notify the general community of a project and offer different types of opportunities for appropriate public involvement in the project process.

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* *This analysis was prepared before the report of the Senate Highways and Transportation Committee appeared in the Senate Journal. Note that the list of co-sponsors and the legislative history may be incomplete.*

- Authorizes the Director to amend the rule identifying the specific positions included in the career professional service whenever the Director determines necessary, rather than only within 60 days after the Director adopts a rule establishing ODOT's business plan.

- Allows the Director to remove or relocate objects or structures of other persons that obstruct or interfere with a highway or highway project without prior notice if the Director determines that the object or structure presents an immediate and serious threat to the safety of the traveling public.

- Recognizes the right of a public utility to continue to occupy any portion of a highway being vacated by ODOT.

- Repeals a requirement for a board of directors of a port authority to prepare a plan for the future development, construction, and improvement of the port and its facilities.

CONTENT AND OPERATION

Real property

Sale of unneeded property

Current law generally authorizes the Director of Transportation to sell land not required for highway purposes. Various sections of law contain similar provisions requiring the Director to (1) obtain an appraisal of the land, (2) advertise the sale of the property, and (3) sell the land at public auction to the highest bidder, for not less than two-thirds of its appraised value. These provisions apply whether the land was acquired from the administrator of worker's compensation or retirement board or "otherwise" (sec. 5501.34), or from the sinking fund (sec. 5501.37), or generally (sec. 5501.32).

Also under current law, if the property has an appraised current fair market value of $5,000 or less, the Director may sell the land to the sole abutting owner through a private sale at a price not less than its appraised value. If there is more than one abutting owner, the Director may take sealed bids from the abutting owners and sell the land to the highest bidder at not less than its appraised value. If unneeded land is reappraised as having a fair market value of $1,000 or less, and no abutting owner purchased the property, current law authorizes the Director to sell the land at public auction to the highest bidder. (Secs. 5501.34 and 5501.37.)

The bill consolidates the authority of the Director to sell unneeded property into one section of the Revised Code, regardless of how or from whom the property was acquired (secs. 5501.32, 5501.34, and repeal of 5501.37). In addition to consolidating the Director's authority, the bill does the following in regard to the sale of unneeded property:

(1) Establishes $20,000, rather than $5,000, as the maximum value unneeded real property may have when the Director offers the property to the abutting owner through a private sale at a price not less than its appraised value.

(2) Establishes $2,000, rather than $1,000, as the maximum value of unneeded real property that may be sold at public auction without regard to its appraised value after an abutting owner fails to purchase the property, but also authorizes the Director to reject all bids that are less than the full appraised value of the property.

(3) Generally retains the requirement that unneeded real property be appraised, and, after advertisement, be sold at public auction for not less than two-thirds of its appraised value.

(4) Replaces references to "land" with the term "real property," a term including buildings and other affixtures to land and also revises other terminology.

The Department of Transportation (ODOT) must pay all expenses incurred in the sale of a parcel of real property out of the proceeds of the sale and must deposit the balance of the proceeds in the highway fund used to acquire that parcel of real property.

Additionally, the bill allows the Director to exchange certain unneeded ODOT property for other needed property. Upon a determination that real property previously acquired within a highway improvement project corridor no longer is needed for highway purposes, the Director may offer the unneeded ODOT property to another landowner located within that project's corridor. The unneeded property may be sold as full or partial consideration for other real property to be acquired from the landowner. If the landowner accepts the offer, the Director must convey the unneeded property directly to the landowner at the full fair market value determined by ODOT by appraisal. The Director then credits the value of the unneeded ODOT property against the acquisition price of the second piece of property being acquired by ODOT; if the value of the unneeded ODOT property exceeds the acquisition price of the property being acquired, the landowner must pay ODOT the difference. (Sec. 5501.34(F).)

Permits to use

In addition to the sale of all rights, title, and interest in unneeded property described above, the Director has authority to "convey or transfer the fee simple estate or any lesser estate or interest in, or permit the use of" lands that are not needed by the state for highway or recreation purposes (sec. 5501.45). In general, this authority is used to convey a lesser interest in property, such as a "permit to use" or an easement.

When a conveyance, transfer, grant, or permit to use is made to an authorized state entity, political subdivision, or institution receiving financial assistance from the state, it is made upon such consideration as the Director determines to be fair and reasonable, without competitive bidding, and without compliance with statutory procedures generally governing the transfer of real property. The bill defines an "institution receiving financial assistance from the state" as including any public or private organization, especially one of a charitable, civic, or educational character, that is in receipt of a state loan, grant, or other type of state financial assistance. It further requires such institutions to provide the Director with acceptable documentary evidence of the state loan, grant, or other type of state financial assistance. (Sec. 5501.45(E).)

Extinguishment of easements and highway vacation to abutting landowners

Under current law, the Director may extinguish any state easement or permit to use areas of land if the Director determines that the easement or permit to use is not needed by the state for highway purposes. The bill allows the Director to make any extinguishment to the current underlying fee owner of record at no cost. (Sec. 5501.45(G).)

Similarly, current law allows the Director, after appropriate notice, to vacate any part of a highway that is no longer necessary for the purposes of a public highway. The bill requires the Director to make any vacation of a part of a highway to an abutting landowner or current underlying fee owner of record at no cost. (Sec. 5511.07.)

Public utilities continuing use of vacated property

The bill specifies that, when ODOT vacates a highway, no public utility may be required to move or relocate any of its facilities located in or on any portion of the vacated highway. This provision is similar to a provision of existing law recognizing that a public utility cannot be required to relocate its facilities when ODOT disposes of unneeded property. The bill additionally requires any deed, transfer, or other instrument or conveyance made by reason of the vacation

to indicate the right of any public utility to continue its use or occupation of the portion of the highway being vacated.

Purchase or appropriation of property for special purposes

In addition to the purchase or appropriation of property for highway improvements, current law allows the Director to purchase or appropriate property for certain related purposes including slopes, detour roads, sewers, roadside parks, rest areas, recreational park areas, scenic view areas, drainage systems, and land to replace wetlands. In addition to these, the bill authorizes the Director to purchase or appropriate property for park and ride facilities, and park and carpool or vanpool facilities. (Sec. 5501.31.)

Contracting issues

Arbitration

Arbitration Law generally recognizes that a provision in a written contract (excluding most real estate contracts) to submit to arbitration is valid. Arbitration generally proceeds in the manner provided for in the agreement, including the appointment of an arbitrator. Arbitration Law establishes the powers of arbitrators, the enforcement of awards, and the procedures for a court to vacate, modify, or correct an award. (Chapter 2711., not in the bill.)

The bill authorizes the Director to include an arbitration clause in any construction contract (sec. 5525.23). If a contract has an arbitration clause, the bill requires it to specify that arbitration will only take place if all parties to the contract agree to arbitration at the time the particular controversy arises. The bill also requires the Director to determine the method and form of arbitration. The bill limits the application of the general Arbitration Law by specifying that the decision of an arbitrator under the bill is not subject to a motion to modify or correct an award. Additionally, no appeal from the decision of an arbitrator lies to any court except that the Franklin County Court of Common Pleas may make an order vacating the award upon the application of any party to the arbitration if any of the following circumstances, referenced from the Arbitration Law, apply:

(1) The award was procured by corruption, fraud, or undue means.

(2) There was evident partiality or corruption on the part of the arbitrators.

(3) The arbitrators were guilty of misconduct in refusing to postpone the hearing, or in refusing to hear pertinent and material evidence; or of any other misbehavior by which the rights of any party were prejudiced.

Contracting for increased quantities or extra work

Current law authorizes the Director to increase the quantities of any item in a competitively bid construction contract without competitively bidding the increase, but only if the increase does not exceed the lesser of $100,000 or 5% of the total contract price. The $100,000 or 5% limitation does not apply to change orders or extra work contracts resulting from (1) an increase in the plan quantity that is determined during the final measurement of an item of work, (2) federally mandated requirements that did not exist at the time of the original contract award, or (3) circumstances that would create a life-, safety-, or health-threatening situation or would unduly delay the completion of a project and increase its costs, but only if the Director makes a finding of such fact, declares an emergency, and issues the finding.

The bill retains the circumstances described above to which the $100,000 or 5% limitation does not apply, but adds that the $100,000 or 5% limitation also does not apply to any change order or extra work contract when the total dollar amount of the increase is $25,000 or less. Accordingly, a change order or extra work contract that exceeds 5% of the total contract value but results in a change of $25,000 or less, does not need to be competitively bid. (Sec. 5525.14.)

Contracts for state highway projects in municipal corporations

Current law requires that when a municipal corporation agrees to cooperate with ODOT in a state highway project within the municipal corporation, the municipal corporation must enter into a contract with the state providing for payment by the municipal corporation of the agreed portion of the cost. All contracts between ODOT and a municipal corporation for work done cooperatively within the municipal corporation must be submitted to and approved by the Director before the Director advertises for bids for the project. The bill requires the contract to be submitted and approved before the *receipt* of bids, rather than before advertising for bids. This extends the time for submission and approval of the contract by approximately one month. (Sec. 5521.01.)

Notification of changes or additions to the state highway system

Currently, before establishing any additional state highways or making changes to existing highways, the Director must provide notice and a hearing. The notice is by publication in a newspaper and must state the route of the proposed highway or the change proposed. The hearing must be open to the public, and the Director or a designated deputy must attend and hear any offered "proof." Notice and a hearing also are required before the Director abandons a state highway and before the Director makes a change in the route of any highway through a municipal corporation. Notice and a hearing are not required before the

construction, reconstruction, maintenance, improvement, or widening of an existing highway where no relocation is involved.

The bill generally offers the Director greater flexibility in informing the public of a highway project. It replaces the notice and hearing requirements described above with a requirement that the Director notify the "general community" of a project and offer an opportunity for "appropriate public involvement" in the project process before establishing any additional state highways, making *significant* changes in existing state highways, abandoning a state highway, and changing a route in a highway through a municipal corporation (sec. 5511.01).

The opportunity for public involvement must satisfy the requirements of the National Environmental Policy Act of 1969. (See **COMMENT**.) It may consist of activities such as public meetings or hearings, small group meetings with local officials, individual meetings, news releases, public notices, workshops, newsletters, electronic communications, radio announcements, mail notification, and other activities considered "appropriate for the exchange of information."

ODOT career professional service program

In general, current law authorizes the Director to place certain managerial, professional, and supervisory classified ODOT employees in a career professional service program and to hold those employees accountable for their job performance according to the ODOT business plan established by the Director. The career professional service program is a pilot program; no one may be appointed to a position in the career professional service after June 30, 2003.

Specifically, current law requires the Director to adopt a rule establishing a business plan only once in each two years; within 60 days of the effective date of the rule establishing ODOT's business plan, the Director must adopt a rule identifying specific positions within ODOT that are included in the career professional service. Under current law, the rule identifying the specific employee positions that are within the career professional service may be amended only within the 60 days after the Director adopts a rule establishing ODOT's business plan. The bill authorizes the Director to amend the rule identifying the specific positions included in the career professional service whenever the Director determines necessary. (Sec. 5501.20.)

Miscellaneous ODOT provisions

Removal of obstructions

Under current law, persons who use or occupy any part of a road or highway with telegraph or telephone lines, steam, electrical, or industrial railways, oil, gas, water, or other pipes, mains, conduits, or any object or structure must remove the object or structure from the road or highway when the Director determines the objects obstruct or interfere with the highway or a highway project. If a person is occupying a road or highway under a valid franchise or permit, the person must relocate their property when it obstructs or interferes with the highway or a highway project. After notification by the Director, the person has five days to remove or relocate the obstructing or interfering property. If the removal or relocation is not completed within a reasonable time, the Director may remove or relocate the property and certify the costs of the removal or relocation to the Attorney General for collection by civil action.

Under the bill, if the Director is of the opinion that the obstruction or properties present an immediate and serious threat to the safety of the traveling public, he may remove or relocate the obstruction or properties without prior notice. For these purposes, the bill also defines "road or highway" by reference to existing law as including bridges, viaducts, grade separations, culverts, lighting, signalization, and approaches to the road or highway; it further includes any part of the road or highway right-of-way. The bill allows notice that a person needs to remove or relocate an obstruction or property to be made by express mail, as well as by personal service or certified mail, as under current law. (Sec. 5515.02.)

Terminology

The bill replaces a reference to "telegraph and telephone" poles with the more general term "utility" poles in the context of authorization to attach signposts, guideposts, and warning or other signs (sec. 5515.04).

The bill also removes an obsolete reference to "journalization" of an action of the Director and replaces it with "approval" by the Director.

Port authorities: plan for future development

Existing law requires a board of directors of a port authority to prepare a plan for the future development, construction, and improvement of the port and its facilities, including whatever maps, profiles, and other data and descriptions may be necessary to show the location and character of the work to be done by the authority. The bill repeals all requirements and references to a required plan for

future development (repeal of secs. 4582.07, 4582.08, 4582.09, 4582.32, 4582.33, and 4582.34).

COMMENT

In regard to highway projects, the National Environmental Policy Act of 1969 generally requires environmental impact statements. It also establishes related procedures, including early and continuing opportunities for coordinated public involvement during project development. *See*, 42 U.S.C.A. §§ 4321, et seq. and 23 C.F.R. Part 771.

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	05-02-00	p. 1634
Reported, S. Highways & Transportation	---	---

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