



**Sub. H.B. 97**

125th General Assembly  
(As Passed by the House)

**Reps. Willamowski, Hagan, McGregor, Seitz, Calvert, Schmidt, Schaffer, Faber, Allen, White, Seaver, Ujvagi, Webster, Fessler, Callender, Buehrer, Wolpert, Olman, Widowfield, Daniels, Collier, Walcher, Domenick, Wagner, C. Evans, Schlichter, Chandler, Cirelli, Sferra, Price, Skindell, Barrett, Beatty, Bocchieri, Carano, Carmichael, Cates, Clancy, DeBose, Distel, Flowers, Gibbs, Hartnett, Harwood, Hughes, Key, Koziura, Latta, Martin, Niehaus, Oelslager, Otterman, S. Patton, T. Patton, Raga, Reidelbach, Schneider, Setzer, D. Stewart, J. Stewart, Strahorn, Taylor, Widener, Yates**

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**BILL SUMMARY**

- Explicitly permits a board of township trustees to enter into a lease or a lease with an option to purchase agreement for road or police department equipment.
- Specifically permits a township, township fire district, or joint fire district to enter into a lease or lease with an option to purchase fire-fighting equipment, appliances, or water supply.
- Generally permits townships, joint township police districts, township fire districts, joint fire districts, and joint fire and ambulance districts to enter into lease-purchase agreements for any real or personal property they are authorized to acquire, and provides requirements for those agreements.
- Permits a telegraph or telephone company to construct telegraph or telephone lines upon, along, and beneath the public roads, highways, and waters in the unincorporated area of a township.

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## CONTENT AND OPERATION

### Lease of township road or police equipment

#### Road equipment

Under current law, a board of township trustees may purchase machinery, tools, trucks, and other equipment for use in constructing, maintaining, and repairing roads and, subject to the Uniform Bond Law, may issue general obligation bonds for their purchase. Although current law gives broad powers to "purchase" and places no limitations on the method of purchasing, the Attorney General has issued an opinion that the term "purchase" should be interpreted narrowly, finding that a "lease" and a "purchase with an option to lease" are not within the power granted in current law to "purchase" equipment (2000 Op. Att'y Gen. No. 19). (Sec. 5549.021.)

The bill specifically permits a board of township trustees to enter into a lease (including a lease with an option to purchase) for all the purposes listed above for which it can make purchases. In addition, the bill requires the board to pay a minimum down payment of 3/20 of the total cost if it enters into a lease with an option to purchase. But, if the township sells used equipment as part of a lease with an option to purchase, the cash down payment may be reduced by the amount of the sale price of the used equipment. A lease with an option to purchase must be competitively bid. (Sec. 5549.021.)

#### Police equipment

Under current law, a board of township trustees may "purchase or otherwise acquire" any police apparatus, equipment, or materials that the township police district requires and may build, purchase, or lease any building or site necessary for the operations of the district. In addition, two or more boards of township trustees may jointly purchase police equipment for any police purpose and prorate the expenses. (Sec. 505.50.)

The bill specifies in these provisions that, in addition to purchasing, a board or boards may lease or lease with an option to purchase police apparatus, equipment, or materials, and that, in addition to purchasing or leasing, a board may lease with an option to purchase buildings or sites for a township police district (sec. 505.50).

### Lease of fire-fighting equipment

As with road and police equipment, the bill adds to the provisions of current law that authorize townships, township fire districts, and joint fire districts



to purchase fire-fighting equipment, appliances, and water supplies, and necessary sites and buildings for fire-fighting purposes, authorization to lease those items, sites, and buildings or to lease them with an option to purchase. Current law already permits a township or township fire district to "purchase or otherwise provide" for fire-fighting equipment, appliances, and water supplies, and a township to purchase or lease necessary buildings for fire-fighting purposes. (Sec. 505.37.)

Current law authorizes a board of township trustees, when purchasing fire-fighting equipment, buildings, or sites or constructing buildings to house fire-fighting equipment, to issue in a specified manner securities with certain maximum maturities (sec. 505.37(D)). The board cannot issue bonds, however, for those and other fire-fighting purposes unless the issuance is approved by the voters and the bonds are in an amount less than the greater of \$150,000 or 2% of the total value of all property in the township as listed and assessed for taxation (sec. 505.40, not in, but referred to in, the bill). The bill provides that these bond issuance prohibitions do not apply to (1) leases with options to purchase fire-fighting equipment, buildings, or sites entered into by a board of township trustees or (2) any securities a board of township trustees issues for purchasing, leasing, or leasing with an option to purchase fire-fighting equipment, buildings, or sites or constructing buildings to house fire-fighting equipment (sec. 505.37(D)).

### **Lease-purchase agreements for townships and certain special districts**

The bill permits a board of township trustees or a board of trustees of a joint township police district, a township fire district, a joint fire district, or a fire and ambulance district to enter into a lease-purchase agreement for any purpose for which it is authorized to acquire real or personal property.<sup>1</sup> In the resolution authorizing the lease-purchase agreement, the board may provide for the issuance of certificates of participation or other evidences of fractionalized interests in the lease-purchase agreement, for the purpose of financing, refinancing, or refunding any public obligation that financed or refinanced the acquisition of the property. (A public obligation can be either securities or obligations to make payments under a lease-purchase agreement.) Third parties could not issue and sell to others or publicly underwrite these fractionalized interests without the knowledge and express written approval or authorization of the township or district (sec. 9.94, not in, but referred to in, the bill). And, no obligation incurred under such a lease purchase agreement could be used in calculating a township's net indebtedness. (Secs. 133.09(C) and 505.267(A) and (B).)

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<sup>1</sup> The bill defines a lease-purchase agreement as having the same meaning as a lease with an option to purchase (sec. 505.267(A)(1)).

A lease-purchase agreement must provide for a series of terms in which no term extends beyond the end of the fiscal year of the township or district in which that term commences. In total, the terms cannot be for more than the "useful life" of the property subject to the agreement. The property's useful life generally must be determined either by the maximum number of installment payments permitted under the statute authorizing the board to acquire the property or, if there is no statutory provision with a maximum number, by the maximum number of years to maturity provided for the issuance of bonds under the Uniform Public Securities Law for that property; if the useful life cannot be determined by either of these means, it must be estimated as provided in the Uniform Public Securities Law. At the end of the final term in the agreement, if all obligations have been satisfied, the title to the leased property must vest in the township or district if it has not vested (presumably under the terms of the agreement) before or during the lease terms, except that the agreement may require the township or district to pay an additional lump sum payment as a condition of obtaining title. (Sec. 505.267(B).)

A board of trustees that enters into a lease-purchase agreement may (1) assign the board's rights to the property, if the property is personal property, (2) grant leases, easements, or licenses for underlying land or facilities for terms not exceeding five years beyond the final term of the agreement, or (3) grant the lessor a security interest in the property (sec. 505.267(C)).

### **Telegraph and telephone lines in unincorporated areas**

#### **Background**

Am. Sub. H.B. 283, the Budget Act of the 123rd General Assembly, revised Ohio law concerning a public utility's use of a public way. That revision required enactment of new sections and the amendment or repeal of various existing statutes. Two of the statutes that were repealed concerned the authority of a telegraph company to locate lines in public ways, including implicitly in township roadways.<sup>2</sup> However, all of the Budget Act provisions concerning public ways were later held to be invalid.<sup>3</sup>

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<sup>2</sup> Sections 4931.01 and 4931.03.

<sup>3</sup> *Dublin v. State, No. 99CVH-08-7 (Ct. of Common Pleas, Franklin County, Ohio, April 1, 2002)*. The Dublin case found the new law (a) violated the single-subject provision of Section 15(D) of Article II of the Ohio Constitution because the main purpose of Am. Sub. H.B. 283--of which it was a part--was to adopt the biennial operating appropriations for that General Assembly, and (b) that some of the provisions violated the home-rule powers of municipal corporations under Section 3 of Article XVIII of the Ohio Constitution.

Am. Sub. S.B. 255 was enacted in the 124th General Assembly to readdress public way authority. Although it amended existing law that allows townships to require permits before any excavation occurs in a township public way, Am. Sub. S.B. 255 primarily enacted new statutes focusing on the authority of many public utilities to use the public ways of a *municipal corporation*, and did not reenact the provision of law that had conferred general authority on a telegraph company to construct lines in the unincorporated territory of a township.

### **Changes proposed by the bill**

The bill seeks to restore the telegraph company authority that was repealed by Am. Sub. H.B. 283, specifically, the authority of a telegraph company to locate lines within public ways in the unincorporated territory of a township. The bill also expressly extends to a "telephone company" the same authority it extends to telegraph companies, notwithstanding that existing law (sec. 4931.11, not in the bill) already confers the authority of a telegraph company on any telephone or other communications business.<sup>4</sup> (Sec. 4931.03.)

Specifically, the bill permits a telegraph or telephone company, within the unincorporated area of a township, to construct telegraph or telephone lines upon and along any public roads and highways and across any waters by erecting necessary fixtures, or to construct those lines and the fixtures necessary for containing and protecting them beneath the surface of any of those roads, highways, or waters. However, those lines must "be constructed so as not to incommode the public in the use of the roads or highways, or endanger or injuriously interrupt the navigation of the waters." This authority does not authorize the construction of a bridge across water, and any construction of telegraph or telephone lines is subject to the Township Permit Law mentioned above. (Sec. 4931.03.)

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<sup>4</sup> *The phrase "and telephone" probably should be deleted because section 4931.11 already confers similar authority on any company organized to transact a telegraph, telephone, or communications business. The deletion of the phrase would make the wording of the bill consistent with other statutes governing telegraph company authority and, by extension, telephone company authority. Additionally, removal of that phrase would remove the ambiguity of the bill as to its significance for any electric company, given that existing section 4933.14 confers on an electric company the same authority as a telegraph company.*

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## HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	03-04-03	p. 204
Reported, H. County & Township Government	04-03-03	p. 327
Passed House (97-0)	05-14-03	pp. 482-483

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