



Sub. H.B. 97

125th General Assembly

(As Reported by H. County & Township Government)

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

BILL SUMMARY

- Explicitly permits a board of township trustees to enter into a lease or a lease with an option to purchase for police department or road 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, 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 that they can acquire by law 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.

CONTENT AND OPERATION

Lease of township police or road 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, 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 in a very narrow fashion, 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 Ohio Att'y Gen'l Op. 019.)

The bill adds language to current law that specifically permits a board of township trustees to enter into a lease for all the purposes for which it can purchase listed above. In addition, the bill requires the board to pay a minimum down payment of 3/20 of the total cost. If the township sells used equipment as part of the purchase price, 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 township police district. In addition, two or more boards of township trustees may jointly purchase police equipment for any police purpose and prorate the expenses. The bill adds language to both of these provisions stating that in addition to purchasing, the board or boards may lease or lease with an option to purchase such equipment or such a building or site. (Sec. 505.50.)

Lease of fire equipment

As with fire and road equipment, the bill adds to the provisions of current law that authorize townships, township fire districts, and joint fire districts to purchase fire equipment, appliances, water supplies, and necessary sites and buildings for fire-fighting purposes, authorization to lease such items, sites, and buildings or to lease them with an option to purchase. (Sec. 505.37.) Current law already permits a township or township fire district to "purchase or otherwise provide" for such items.

Lease-purchase agreements for townships and certain special districts

(secs. 133.09 and 505.267)

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 they are authorized to acquire real or personal property. In the resolution authorizing the lease-purchase agreement, the board may also provide

for the issuance of certificates of participation or other evidences of fractionalized interests in the lease-purchase agreement, for the purpose of financing, or 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 the 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 the bill.) No obligation incurred regarding the agreement will be used in calculating the township's net indebtedness.

The 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 that is the subject of the agreement, which is determined either by the maximum number of installment payments permitted under the statute that authorizes the board to purchase the property, or if none, by the maximum number of years to maturity provided for the issuance of bonds under the Uniform Bond Law for such property, or if not listed there, estimated as provided in the Uniform Bond 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 before or during the lease terms, except that the lease-purchase agreement may require the township or district to pay an additional lump sum payment as a condition of obtaining that title.

A board of trustees that enters into the lease-purchase agreement may (1) assign the board's rights to that 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.

Telegraph and telephone lines in unincorporated areas

(sec. 4931.03)

Reasons for changes. A new law addressing a public utility's right to use a public way was enacted in the 123rd General Assembly, but later was held to be invalid.¹ Sub. S.B. 255 of the 124th G.A. attempted to again address these issues

¹ *Dublin v. State, No. 99CVH-08-7 (Ct. of Common Pleas, Franklin County, Ohio, April 1, 2002. The Dublin case found the new law (1) 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 (2) that some of the provisions violated*

by enacting a new law for a utility's right to use a public way, concentrating primarily on the use of municipal rights-of-ways. S.B. 255 repealed several then-existing statutes in the Public Utility Law, including a general authorization for telegraph companies to "construct telegraph lines upon and along any of the public roads and highways, and across any waters, within this state, by the erection of the necessary fixtures . . . so as not to incommode the public in the use of the roads or highways, or endanger or injuriously interrupt the navigation of such waters." (Repealed sec. 4931.01.) Another provision of the Public Utility Law made this general provision quoted above, applicable to any company organized as a telegraph, telephone, or communications business. (See former sec. 4931.11.)

On the other hand, S.B. 255 enacted a provision that permits a board of township trustees to require any person to obtain a permit before making an excavation in a public highway right-of-way within its jurisdiction, but exempted from that permit process any excavation to repair, rehabilitate, or replace a pole already installed for electric or telecommunications service or an excavation project to install five or fewer such poles. (Sec. 5571.16.) However, the repealed sections mentioned above that gave general authority for telegraph companies (and by application of section 4931.11, telephone and communication businesses) to construct their lines was replaced only with regard to municipal corporations, so there was no authority for those companies to construct lines in the unincorporated areas of the state.

The bill. 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 such lines and the fixtures necessary for containing and protecting those lines beneath the surface of any of those roads or highways and waters in those areas.² However, these 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 such construction is subject to the township permit law mentioned above. (Sec. 4931.03.)

the home-rule powers of municipal corporations under Section 3 of Article II of the Ohio Constitution.

² *The bill uses the phrase "telegraph or telephone" even though by application of section 4931.11, the provisions of the bill would apply to telephone and communications businesses. To make the reference consistent with the remainder of that section of the Revised Code, the term "and telephone" should probably be deleted and then section 4931.11 would operate to apply the bill's provisions to telephone companies, as well as telecommunication businesses.*

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	03-04-03	p. 204
Reported, H. County & Township Government	04-03-03	p. 327

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