Ohio Legislative Service Commission

Bill Analysis

Amber Hardesty

H.B. 513

129th General Assembly
(As Introduced)

Rep. Maag

BILL SUMMARY

- Specifies that the Department of Administrative Services (DAS) may enter into lease-purchase agreements with any person or political subdivision in the state for any public purpose or private use for the benefit of the state.

- Permits DAS, under a lease-leaseback agreement, to lease real property of the state to provide for the construction of buildings, structures, and other improvements for the use of the state.

- Permits the Office of the State Architect and Engineer to enter into a lease-purchase agreement providing for the construction, renovation, or addition and eventual acquisition of a building or improvements to a building for any state agency, college, university, or instrumentality, or college preparatory boarding school.

- Authorizes the state and boards of county commissioners to enter into agreements for the sale and leaseback of state-owned buildings and county-owned buildings, respectively.

- Requires a board of county commissioners to provide office space and utilities to the county's general health district board of health through FY 2013 and requires the board of county commissioners to pay in FY 2014 through FY 2017 specified decreasing proportions of the estimated costs of office space and utilities, with no obligation to provide or pay for office space and utilities after FY 2017.

- Relieves the board of county commissioners of its obligation to provide office space and utilities if the board of health rents, leases, lease-purchases, or acquires office space on its own.

- Permits a board of county commissioners, in FY 2018 and thereafter, to provide office space and utilities to the general health district board of health, by contract.

- Authorizes the board of county commissioners, at any time, to provide office space and utilities to the board of health free of charge.

CONTENT AND OPERATION

Lease-purchase and lease-leaseback agreements

Lease-purchase agreements – Department of Administrative Services

The bill amends three provisions of existing law related to lease-purchase agreements entered into by the Department of Administrative Services (DAS). First, under this type of agreement, the state leases property owned by another contracting party; however, current law does not specify what entities are eligible to be a contracting party with the state. The bill specifies that the contracting party may be any person or political subdivision located in Ohio. Second, the bill creates a new purpose for which DAS may enter into a lease: currently, a lease must be for any public purpose; the bill adds that the lease may also be for the private use for the benefit of the state. Lastly, the bill repeals the public bidding requirements for lease-purchase agreements under which a state agency leases buildings, structures, and other improvements under a lease-purchase agreement. In its stead, the bill requires the person or subdivision entering into the lease-purchase agreement to provide to DAS satisfactory plans detailing the nature and costs, including financing costs, for the improvements under the agreement.

Lease-leaseback agreements

In addition to the existing authority to enter into a lease-purchase agreement for property, the bill gives DAS additional authority to enter into a lease-*leaseback* agreement to lease real property of the state to another contracting party. Specifically, the bill does all of the following regarding lease-leaseback agreements:

- Specifies that DAS may enter into the agreement with any person or political subdivision located in Ohio;

- Requires that any improvement made under the agreement must be for any public purpose or private use for the benefit of the state;

- Requires the person or subdivision to do the following under the agreement: (1) construct buildings or structures, or make other alterations, renovations, repairs, expansions, or other improvements to the

property as it exists on the date of the agreement, and (2) lease to the state, during the agreement period, space that DAS deems necessary in any building, structure, or other similar improvement on the property;

- Requires that the person or subdivision leasing the property provide to DAS satisfactory plans detailing the nature and cost, including financing costs, of improvements to the property;
- Specifies that the lease period must not exceed 40 years;
- Specifies that at the end of the lease period, the buildings, structures, and improvements become the property of the state without cost;
- In conjunction with entering into a lease-leaseback agreement, permits the state to grant leases, easements, or licenses for lands under the control of a state agency for a period not exceeding 40 years.[1]

Lease-purchase agreements – Office of the State Architect and Engineer

The bill also enacts a new provision that permits the Office of the State Architect and Engineer to enter into a lease-purchase agreement providing for the construction, renovation, or addition and eventual acquisition of a building or improvements to a building for any state agency, college, university, or instrumentality, or college preparatory boarding school, subject to the following conditions:

- The agreement must provide for a lease for a series of two-year renewable lease terms totaling not more than 30 years.
- The agreement must provide that at the end of the series of lease terms under the agreement, if all obligations of the state under the agreement have been satisfied, the title to the leased property is vested in the state.
- Payments under the agreement may be deemed to be, and paid as, current operating expenses.
- The Office may lease for a period not to exceed 30 years, real estate owned by the state to any person or political subdivision of the state approved by the Office, provided that the lease requires the lessee under a lease-purchase or lease-leaseback agreement to construct buildings, structures, and other improvements for any public purpose or private use for the benefit of government, or to alter, renovate, repair, expand, and improve

[1] R.C. 123.01(A)(14).

the property as the property exists on the date of the lease, and, in conjunction therewith, to grant leases, easements, or licenses for lands under the control of a state agency for a period not to exceed 40 years.

- The lease-leaseback or lease-purchase plan must provide that at the end of the lease period, the buildings, structures, and related improvements, together with the land on which they are situated, become the property of the state without cost.

- The lease must contain provisions that require the lessee to lease to the state such space in any building or structure on the property that the Commission considers necessary.[2]

It is uncertain how this provision, granting the authority to the Office, works with or is in conflict with the provision discussed above granting authority to DAS. In any event, the bill grants both DAS and the Office, which is under DAS, with similar authority regarding lease-purchase agreements.

Sale/leaseback of state and county buildings

The bill permits the state to enter into sale and leaseback agreements in which the state agrees to convey a state-owned building to a purchaser who is then immediately required upon closing to lease the building back to the state. The bill provides that such an agreement obligates the lessor to make certain improvements to the building, including renovations and energy conservation measures, that are necessary to improve its functionality and reduce its operating costs. The bill also permits boards of county commissioners to enter into the same type of agreements imposing the same type of requirements regarding county-owned buildings.

The bill specifies that such sale and leaseback agreements are not limited, as applicable, by current law governing the Department of Administrative Services' authority over state property and Board of County Commissioners authority over county property and facilities.[3]

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[2] R.C. 123.24 and 123.25.

[3] R.C. 123.51 and 307.093.

Local boards of health

Office space and utilities

County responsibility for office space and utilities

The bill requires a board of county commissioners to provide office space and utilities through fiscal year 2013 for the board of health having jurisdiction over the county's general health district. Current law provides that a board of county commissioners, as well as the legislative authority of a city, "may" furnish suitable quarters for any board of health or health department having jurisdiction over all or a major part of the county or city. The Attorney General has advised that a board of county commissioners, but not a city, *is required* to provide and pay for "office space and utilities" under this law.[4]

After fiscal year 2013, the bill requires the board to make decreasing payments for office space and utilities for the board of health, based upon a written estimate of their total cost, until fiscal year 2018, at which time the board no longer has the duty to provide or pay for the board of health's office space and utilities.

Estimate of total cost

The bill requires the board of county commissioners, not later than September 30 of 2012, 2013, 2014, and 2015 to make a written estimate of the total cost for the ensuing fiscal years 2014, 2015, 2016, and 2017, respectively, to provide office space and utilities to the board of health of the county's general health district. The estimate of total cost must include all of the following:

- The total square feet of space to be used by the board of health.
- The total square feet of any common areas that should be reasonably allocated to the board of health, and the method for making this allocation.
- The actual cost per square foot for both the space used by and the common areas allocated to the board of health.
- An explanation of the method used to determine the actual cost per square foot.

[4] *See* 1996 Op. Att'y Gen. No. 96-016, 1989 Op. Att'y Gen. No. 89-038, 1986 Op. Att'y Gen. No. 86-037, 1985 Op. Att'y Gen. No. 85-003, and 1980 Op. Att'y Gen. No. 80-086.

- The estimated cost of providing utilities, including an explanation of how this cost was determined.

- Any other estimated costs the board of county commissioners anticipates will be incurred to provide office space and utilities to the board of health, including a detailed explanation of those costs and the rationale used to determine them.

The board of county commissioners must forward a copy of the estimate of total cost to the director of the board of health not later than October 5 of 2012, 2013, 2014, and 2015. The director must review the estimate and, not later than 20 days after its receipt, notify the board of county commissioners that the director agrees with or objects to the estimate, giving specific reasons for any objections.

If the director agrees with the estimate, it becomes the final estimate of total cost. Failure of the director to make objections to the estimate by the 20th day after its receipt is deemed to mean that the director is in agreement with the estimate.

If the director timely objects to the estimate and provides specific objections to the board of county commissioners, the board must review the objections and may modify the original estimate, and within ten days after receipt of the objections, send a revised estimate of total cost to the director. The director must respond to a revised estimate within ten days after receiving it. If the director agrees with the estimate, the revised estimate becomes the final estimate of total cost. If the director fails to respond within the ten-day period, the director is deemed to have agreed with the revised estimate. If the director disagrees with the revised estimate, the director must send specific objections to the board of county commissioners within the ten-day period.

If the director timely objected to the original estimate or sends specific objections to a revised estimate within the required time, or if there is no revised estimate, the probate judge of the county must determine the final estimate of total cost and certify this amount to the director and the board of county commissioners before January 1 of 2013, 2014, 2015, or 2016, as applicable.

Payment schedule

Under the bill, a board of county commissioners must pay for the board of health's office space and utilities until fiscal year 2018, based on the following percentages of the final estimate of total cost:

(1) 80% for fiscal year 2014;

(2) 60% for fiscal year 2015;

(3) 40% for fiscal year 2016;

(4) 20% for fiscal year 2017.

In fiscal years 2014, 2015, 2016, and 2017, the board of health is responsible for the payment of the remainder of any costs incurred in excess of the amount payable under (1) through (4), above, as applicable, for its office space and utilities, including any unanticipated or unexpected increases in costs beyond the final estimate of total cost.

Beginning in fiscal year 2018, the board of county commissioners has no obligation to make payments for, or provide, office space and utilities for the board of health.

Other methods to obtain office space and utilities

After fiscal year 2017, the board of county commissioners and the board of health of the county's general health district may enter into a contract for the board of county commissioners to provide office space for the use of the board of health and to provide utilities for that office space. The term of the contract cannot exceed four years and may be renewed for additional periods not to exceed four years.

Notwithstanding the bill's requirements and payment schedule, in any fiscal year the board of county commissioners, in its discretion, may provide office space and utilities for the board of health free of charge.

Board of health obtains own office space

If at any time the board of health rents, leases, lease-purchases, or otherwise acquires office space to facilitate the performance of its functions, or constructs, enlarges, renovates, or otherwise modifies buildings or other structures to provide office space to facilitate the performance of its functions, the board of county commissioners of the county served by the general health district has no further obligation to provide office space or utilities, or to make payments for office space or utilities, for the board of health, unless the board of county commissioners enters into a contract with the board of health to provide office space for the use of the board of health and to provide utilities for that office space, or exercises its option to provide office space and utilities to the board of health free of charge.[5]

[5] R.C. 3709.34.

HISTORY

ACTION	DATE
Introduced	04-12-12

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