



Stephen Estelle

Bill Analysis
Legislative Service Commission

Sub. S.B. 306
127th General Assembly
(As Reported by H. Ways and Means)

Sens. Schuler, Mumper, Seitz, Wagoner, Schaffer, Spada, Cates, Amstutz, Austria, Buehrer, Grendell, Harris, Niehaus, Padgett, Schuring, Stivers, Jacobson

Reps. Gibbs, Schindel, Mecklenborg, J. Hagan, Slesnick

BILL SUMMARY

- Expands eligibility for the homestead property tax exemption, the 2.5% "rollback," and the county property tax payment linked deposit program for residents of housing cooperatives by reducing the number of units a housing complex must contain to qualify as an eligible housing cooperative from 250 to 2.
- Expands the definition of an owner of a homestead to include settlors of irrevocable *inter vivos* trusts for purposes of the homestead exemption, the 2.5% rollback, the linked deposit program, and the manufactured home tax.
- Eliminates the necessity of issuing certificates of reduction for homestead exemptions and requires the county auditor to approve or deny applications by the first Monday in October.
- Modifies the state funding computation for joint vocational school districts when a new school district is added to the joint district.
- Requires a real estate broker to disburse earnest money deposits as instructed by the purchase agreement, a final court order, the parties' written instructions, or as required under unclaimed funds law.
- Requires a real estate broker to disburse 100% of an earnest money deposit to the Director of Commerce if the deposit is reported as unclaimed funds.

- Authorizes a county with a population greater than 400,000 that levies only one excise tax on hotel-guest transactions (the rate of which must be 3%) to increase the rate by up to 4%.
- Authorizes such a county to use a portion of the revenue from the first 3%, and requires the county to use all of the revenue from the rate in excess of 3%, for the purposes of undertaking, financing, or leasing an arena or convention center project not existing on the effective date of the bill.
- Requires the county to levy the additional tax at the rate originally imposed until the later of the following: 35 years after adoption of the resolution imposing the additional tax; the date securities issued to fund project costs are no longer outstanding; or the date the county no longer leases or owns the arena or convention center.
- Changes population criteria governing which counties may use certain financing options for arena or convention center projects or leasing such a facility from another entity.

CONTENT AND OPERATION

Homestead exemption

Current law

The homestead property tax exemption (R.C. 323.151 to 323.159 and 4503.064 to 4503.069) is available for "homesteads" owned and occupied by persons who are (1) permanently and totally disabled, or (2) at least 65 years of age, or at least 60 years of age and the surviving spouse of a person who received the exemption at the time of death. The exemption also applies to manufactured and mobile homes regardless of whether they are taxed as real property or taxed under the manufactured home tax. The exemption equals the net amount of taxes due on \$25,000 of the appraised market value of a homestead, and is computed on the basis of the local effective tax rate (manufactured and mobile homes are assessed at 40% of cost or market value and are depreciated).

Housing cooperative units that are occupied as homes by Ohio residents who satisfy the age or disability criteria described above also qualify as "homesteads" eligible for the exemption. Under current law, a "housing cooperative" is a housing complex of at least 250 units owned and operated by a nonprofit corporation that issues a share of stock to an individual to live in a unit

of the complex and collects a monthly maintenance fee from the individual to maintain, operate, and pay the taxes of the complex.

Current law provides a 2.5% partial real property tax reduction, commonly called a "rollback," for any owner-occupied homestead or owner-occupied manufactured or mobile home. (R.C. 323.152(B).) Housing cooperative units occupied as homes also may qualify as "homesteads" eligible for the rollback.

Boards of county commissioners are authorized by continuing law (R.C. 135.804 to 135.807) to establish property tax payment linked deposit programs for making low-interest loans to elderly or permanently and totally disabled persons to help them pay real property taxes on their homesteads. Linked deposit programs are generally available to individuals who satisfy the same age or disability criteria as in the homestead property tax exemption law, whose income is within specified limits, and who own and reside in their homesteads. The linked deposit program law uses the same definitions of "homestead" and "housing cooperative" used in the homestead property tax exemption law.

Expand eligibility

(R.C. 135.804(E), 323.151(D), and 323.159)

The bill reduces the number of units a housing complex must contain to qualify as a "housing cooperative" (and thus a "homestead") from 250 units to 2 units. The residents of the housing cooperative may be eligible for the homestead property tax exemption and the property tax payment linked deposit program if they otherwise meet the income and disability or age requirements. Residents of a housing cooperative containing at least 2 units also would be eligible for the 2.5% rollback because their units would qualify as owner-occupied homesteads.

Inter vivos trusts

(R.C. 135.804(D)(2), 323.151(A)(2), 323.153(C)(4), 4503.065(B), and 4503.066(B))

Current law provides that the "owner" of a homestead includes a settlor (a person who creates a trust) of a revocable *inter vivos* trust when the trust holds title to the homestead and the settlor occupies the homestead as of right under the trust. (Generally, an *inter vivos* trust provides that a settlor may live in the settlor's homestead until death, at which time the trust beneficiary receives the homestead. "Revocable" means the settlor reserves the right to terminate the trust and recover the trust property at any time.)

The bill expands the definition of a homestead "owner" for purposes of the homestead exemption, manufactured home taxes, 2.5% rollback, and the linked

deposit program to include the settlor of an irrevocable *inter vivos* trust (i.e., a trust that cannot be terminated by the settlor once it is created). The bill eliminates the requirement to report changes in or revocation of a revocable *inter vivos* trust.

Homestead certificate of reduction

(R.C. 307.07, 323.151 to 323.156, 323.159, and 4503.066 to 4503.068)

Under current law, to receive the homestead exemption or the 2.5% rollback a qualifying homeowner or cooperative housing occupant must submit an application to the county auditor. If the applicant is entitled to either or both exemptions, the auditor is required to prepare a certificate of reduction and send the original and one copy to the county treasurer who must forward the original to the applicant with the applicant's tax bill. Certificates of reduction must provide information relevant to the exemption. Certificates have been used as a means of providing notice to the homeowner that the application has been granted and as evidence the homeowner is entitled to either or both reductions.

The bill eliminates the necessity of issuing certificates of reduction and requires the county auditor to notify an applicant if the application has been granted or denied on or before the first Monday in October. (Generally, applications must be submitted before the first Monday in June.) If the applicant is a cooperative housing occupant, notice must also be sent to the nonprofit corporation that owns and operates the cooperative. If the application is denied, the notice must provide the reason for the denial. The notice must be provided on a form approved by the Tax Commissioner.

Joint vocational school district funding

(R.C. 3317.16(A)(4))

Joint vocational school districts (JVSDs) are special taxing districts that provide career-technical instruction to high school students. They are formed by agreements among two or more school districts. The member districts send their students who wish to enroll in career-technical programs to the JVSD for those services.

Under continuing law, the level of state foundation funding provided to JVSDs depends in part on the taxable value of real property located in the JVSD. When a school district joins an existing JVSD, its taxable property value is included in the funding calculation and becomes subject to the JVSD's property taxes. Likewise, when a school district parts from a JVSD its taxable property is no longer included in the calculation or subject to the JVSD's taxes.

The bill permits a school district's taxable property to be considered in determining the JVSD's foundation funding for a fiscal year only if the district is subject to the JVSD's property taxes for the tax year that includes the beginning of the fiscal year and the tax year immediately preceding. For example, a school district's taxable property may be considered for fiscal year 2010 JVSD funding (July 1, 2009-June 30, 2010) if the school district was subject to the JVSD tax for tax years 2008 and 2009 (collected in 2009 and 2010, respectively).

Real estate broker earnest money deposits

(R.C. 4735.18(A)(26) and 4735.24)

General requirements

Continuing law requires real estate brokers to maintain a special or trust account at a bank or similar institution in Ohio and deposit into the account money the broker receives in a fiduciary capacity. Failure to do so may result in disciplinary action. Disciplinary action may also result if the broker fails to hold and disburse escrowed funds related to a real estate contract according to the contracting parties' lawful instructions. (See e.g., *Richard T. Kiko Agency, Inc., v. Ohio Dept. of Commerce* (1990), 48 Ohio St.3d 74.)

The bill requires a real estate broker who receives earnest money in connection with a real estate purchase agreement to maintain the funds in a trust or special account in accordance with the terms of the purchase contract until the broker receives a court order or written instructions signed by both parties specifying how the broker is to disburse the money. If the broker receives neither, the broker must maintain the funds in the account in accordance with the purchase contract until the funds become unclaimed funds under unclaimed funds law.

Unclaimed funds

Under continuing law, earnest money deposits become unclaimed funds two years after they are deposited if, during that time, the funds are not claimed. (R.C. 169.02(M)(2).)

Under the bill, if the earnest money deposit becomes unclaimed funds the broker must provide notice of such to the parties and submit a verified report and all of the unclaimed funds (regardless of the amount) to the Director of Commerce. (Continuing law requires holders of other unclaimed funds to remit 100% of unclaimed funds under \$50 and, unless otherwise instructed by the Director, only 10% of unclaimed funds over \$50.)

Real estate contract instructions

Continuing law permits parties to a real estate contract to specify in the contract the circumstances under which the buyer will be entitled to a refund of the earnest money or the seller will be entitled to its disbursement.

The bill specifically authorizes the buyer and seller to agree that the broker will return the earnest money to the purchaser without notice to either party unless, within two years from the date the earnest money was deposited in the broker's trust or special account, the broker receives one of the following:

(1) Written instructions signed by both parties specifying how the money is to be disbursed;

(2) Written notice that a court action to resolve a dispute regarding the disbursement of the earnest money has been filed.

If the buyer and seller agree to those terms, a dispute between them arises, two years have passed since the earnest money was deposited into the broker's account, and the broker has not received either the written instructions or notice, the bill requires the broker to return the deposit to the buyer not later than the September 1 following the two-year deadline. If the broker cannot locate the purchaser, the bill requires the broker to send notice of the deposit to the buyer and seller and then report and remit the deposit as unclaimed funds to the Director of Commerce as explained above.

If the broker timely receives a written notice of a court action, and the purchase agreement indicates what the broker must do in that event, the bill requires the broker to follow those instructions. The bill, however, does not appear to provide default instructions in the event the broker receives the written notice of a court action and the purchase agreement does not indicate what the broker must do.

Lodging tax revenue for arena or convention center purposes

(R.C. 307.695(F), (G), and (I) and 5739.09(A)(8))

Current law authorizes counties to levy an excise tax on hotel-guest transactions at a rate not to exceed 3% per transaction to support a convention and visitors' bureau. Up to one-third of the revenue generated in a municipal corporation or in the unincorporated portion of a township, however, must be returned to the municipal corporation or township if the municipal corporation or township does not also levy a lodging tax. Current law also authorizes a county meeting two conditions--they have a population greater than 400,000, and the largest city in the county comprises no more than one-third of the county's

population--to purchase, construct, improve, equip, or furnish an arena or convention center, or both. To finance the project, such a county may issue bonds and divert a portion of the lodging tax revenue not returned to a municipal corporation or township to pledge as security for the bonds. Only the counties meeting both conditions and that levy just one lodging tax, doing so at a rate of 3%, are affected by the bill.

The bill authorizes such a county to amend its resolution levying the lodging tax to increase the rate by up to 4%. The resolution must provide that some of the revenue generated by the first 3% may be used, and all of the revenue generated by the rate in excess of 3% shall be used, for the purposes of constructing, acquiring, equipping, furnishing, or leasing an arena or convention center, or both. Such use includes paying debt charges from bonds issued to fund the project. The arena or convention center must be "new" in the sense that it does not exist on the bill's effective date.

The resolution must also provide that the additional tax be levied at the rate originally imposed until the later of the following: 35 years after adoption of the resolution imposing the additional tax; the date securities issued to fund the project are no longer outstanding; or the date the county no longer leases or owns the arena or convention center.

The bill also changes population criteria that determines which counties may issue securities for certain arena or convention center projects and pledge revenue from the projects, in addition to lodging tax revenue, to the payment of associated debt charges. Currently, counties with that authority must have a population greater than 400,000 and the population of the largest city in the county must comprise more than one-third of the county population. The bill lowers the one-third criterion to one-fourth. The bill also permits such a county to lease or lease-purchase an arena or convention facility from another entity.

HISTORY

ACTION	DATE
Introduced	03-12-08
Reported, S. Ways & Means & Economic Development	05-21-08
Passed Senate (33-0)	05-22-08
Reported, H. Ways & Means	12-11-08

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