



Ohio Legislative Service Commission

Bill Analysis

Wendy H. Gridley

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130th General Assembly

(As Reported by S. Public Safety, Local Government, and Veterans Affairs)

Reps. Brenner and Gerberry, R. Adams, Anielski, Antonio, Baker, Barborak, Beck, Blair, Blessing, Boose, Buchy, Burkley, Carney, Celebrezze, Conditt, Damschroder, Derickson, Driehaus, Duffey, Fedor, Green, Grossman, Hackett, Hayes, Letson, Lundy, Lynch, Mallory, Milkovich, O'Brien, Patterson, Pillich, Ramos, Retherford, Rogers, Ruhl, Sprague, Stebelton, Stinziano, Strahorn, Thompson, Wachtmann, Batchelder

BILL SUMMARY

County recorder provisions

- Modernizes terminology in the Revised Code to accurately reflect how the county recorder records and keeps instruments today, for example, by computer and on other media, rather than in record books and on paper.
- Requires that instruments presented for recording be kept in the county recorder's general record series known as the "official records," rather than in six separate sets of records.
- Consolidates separate indexes of instruments into the direct and reverse indexes and repeals the requirement to maintain the "notice index."
- Eliminates obsolete fees for recording certain instruments manually or by typewriter, and requires a fee to be charged for recording notices of possessory interests in land.
- Eliminates a fine on any county recorder who records plats contrary to a municipal corporation's platting laws.

* This analysis was prepared before the report of the Senate Public Safety, Local Government, and Veterans Affairs Committee appeared in the Senate Journal. Note that the list of co-sponsors and the legislative history may be incomplete.

- Makes general recording changes.
- Requires the lessor of natural gas and oil lands, and the owner of surface lands to file with the county recorder, a notice of a lessee's or mineral interest holder's failure to file a notice that the lease has not been forfeited or the mineral interest has not been abandoned.
- Allows the county recorder to dispose of paper versions of notices of recognizance liens and of their discharge if the county records commission revises the records retention and disposal schedule accordingly.
- Adds to the requirement that when the county auditor transfers any conveyance of real property presented to the auditor and reviews the conveyance to insure it complies with the standards that the auditor and county engineer must currently adopt by written agreement, the auditor must also review it to see that it complies with the County Recorder's Law and local county recorder requirements.
- Makes changes regarding instruments affecting registered land.
- Eliminates the current ability for a person with registered land in a county that has adopted a resolution of abolition to seek a restraining order against the abolition of the land registration system in that county by repealing the statutory authority for that cause of action.
- Changes the time when implementation of abolition will occur from one following the expiration of the time for commencing the cause of action or when the time for appeals have been exhausted to no more than one month after the adoption of the resolution of abolition.
- Eliminates the requirement to provide mail notice to landowners and adverse claimants of the public hearing on a proposal to abolish land registration.
- Eliminates the recording of certain instruments as chattel mortgages and instead requires them to be recorded in the official records.
- Permits a special taxing district, the territory of which is coextensive with the territorial limits of a county to designate the county records commission as the records commission for the special taxing district.
- Makes other technical changes to the county recorder laws.



Tax-related provisions

- Accelerates application of a commercial activity tax (CAT) exclusion for receipts of grain handlers from grain sales.
- Authorizes a taxpayer eligible to claim a portion of a corporation franchise tax (CFT) credit for tax year 2014 for rehabilitating historic buildings to instead claim the credit at the end of tax year 2013, before the CFT expires.
- Expressly provides for the continued application of the qualifying pass-through entity withholding tax on entity owners after the CFT expires by specifying that the rate of the withholding tax remains 8.5% after the CFT expires.
- Clarifies that inflation-indexing adjustments to income tax brackets and the personal and dependent exemptions remain effective until the next calendar year in which a new adjustment is made.
- Clarifies that a taxpayer may deduct retirement pay from service in the Commissioned Corps of the National Oceanographic and Atmospheric Agency (NOAA) or Public Health Service (PHS) for taxable years beginning in 2013.
- Applies the 10% and 2.5% partial property tax exemptions ("rollbacks") to all inside millage, regardless of the tax year to which the levy of the millage would first apply.
- Authorizes a surviving spouse aged 59 or older whose deceased spouse received the homestead exemption for tax year 2013 to continue to receive the exemption, regardless of the surviving spouse's income.
- Lengthens the maximum term of a property tax levy benefitting a zoo operated or supported by a county.
- Authorizes a property tax exemption for a convention center or arena owned by a city and located in a county that had a population between 500,000 and 600,000 when the facility was constructed.
- Suspends transfers to the Income Tax Reduction Fund until July 1, 2015, from any use tax collections that may arise from remote sellers if Congress enacts legislation to let states require those sellers to collect use taxes.



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CONTENT AND OPERATION

County recorder's "official records"

In general, the bill updates the Revised Code to accurately reflect how the county recorder records and maintains instruments filed in the county recorder's office. The bill changes archaic terminology to indicate how the county recorder records and keeps instruments today, for example, by computer and on other media, rather than in record books and on paper, and requires the county recorder to record all instruments and



maintain them in one general record series known as the "official records."¹ In addition to the official records, the county recorder may keep a separate set of records that contains plats and maps of town lots and their subdivision, and of other divisions or surveys of land, as allowed under continuing law.²

The bill eliminates the current requirement for the county recorder to keep the following six separate sets of records, and expunges any terminology in the law that is related to those records:

(1) A record of deeds;³

(2) A record of mortgages;⁴

(3) A record of powers of attorney and memoranda of trust;⁵

(4) A record of plats;⁶

(5) A record of leases;⁷ and

(6) A record of declarations relating to the use of life-sustaining treatment and durable powers of attorney for health care.⁸

Instead, all of these instruments must be recorded and maintained in the county recorder's official records.⁹

The bill also requires the county recorder to record unemployment compensation liens, federal tax liens, and other types of liens, for example, personal tax liens and

¹ R.C. 317.08(A).

² R.C. 317.08(C).

³ R.C. 149.52, 317.08, 317.10, 317.22, 961.02, 961.05, 1701.73, 1701.81, 1701.811, 1702.38, 1702.43, 1702.462, 1705.38, 1705.381, 1729.38, 1776.70, 1776.74, 1782.433, 1782.4310, 2113.62, 5301.14, 5301.255, 5301.52, 5302.17, 5302.171, 5302.222, and 5309.13.

⁴ R.C. 135.807, 317.08, 5301.28, 5301.32, 5301.331, 5301.34, 5301.35, 5302.15, and 5721.35.

⁵ R.C. 317.08, 1337.08, 5301.255, and 5815.15.

⁶ R.C. 317.08, 503.13, and 709.38.

⁷ R.C. 317.08, 4961.39, 5301.33, and 5301.332.

⁸ R.C. 317.08; R.C. 1337.12 and 2133.02, not in the bill.

⁹ R.C. 317.08.



mechanic's liens, in the official records. Current law allows, but does not require, the county recorder to index, keep, and record all of these types of liens in one volume.

Current law requires the county recorder to keep a separate set of records containing all corrupt activity or Medicaid fraud lien notices. Under the bill, these notices, too, must be recorded in the official records.¹⁰

Similarly, any notices of payment of workers' compensation contributions by an employer against whom a lien has been filed must be recorded in the official records.¹¹

The bill requires the county recorder to keep in the official records, assignments of tangible or intangible personal property presented for recording. Current law requires the county recorder to keep a separate set of records of those assignments.¹²

As part of requiring all instruments to be kept in the county recorder's official records, the bill eliminates the book known as the "partition fence record,"¹³ and removes terminology relating to recording an instrument in the "office of the county recorder," in a "book," in a "suitable book," "on paper," in the "proper records," or recording instruments in two sets of record books.¹⁴

Indexes

The bill does not affect the current requirement that the county recorder "make and keep up" direct and reverse indexes of all the names of both parties to all instruments received for record, with the name of each grantor entered in the direct index and the name of each grantee entered in the reverse index. But the bill eliminates the requirement that the indexes be made up at the beginning of each day's business, that grantors and grantees be entered on the same line, and that the indexes be kept alphabetically with names entered under the appropriate letter. The bill also eliminates the requirement that instruments regarding condominiums be indexed alphabetically and entered in the direct and reverse indexes in a specific manner.¹⁵

¹⁰ R.C. 317.08(B) and (D), 317.09, 1513.33, 4141.23, 5715.701, 5719.04, and 5747.451.

¹¹ R.C. 4141.23.

¹² R.C. 317.08(E).

¹³ R.C. 971.15.

¹⁴ R.C. 317.09, 317.112, 317.13, 317.15, 317.17, 323.43, 503.13, 703.16, 707.09, 709.06, 709.32, 709.39, 1311.06, 1311.35, 1311.42, 1513.37, 2505.13, 2937.27, 5301.21, 5715.701, and 5747.451.

¹⁵ R.C. 317.18.



The bill eliminates the following indexes, the manner for recording instruments in them, and any references in law to these indexes, and instead generally requires the instruments to be indexed in the county recorder's direct and reverse indexes:

- Indexes of notices of liens and notices of discharges.¹⁶
- The "federal tax and other federal lien index."¹⁷
- The general index of deeds.¹⁸
- The index of powers of attorney.¹⁹
- Grantee deed index and grantor deed index.²⁰

The bill repeals a law that requires the county recorder to maintain a book known as the "Notice Index" that contains separate pages headed by the original survey sections or surveys or parts or subdivisions thereof, or the permanent parcel numbers or lots. The book also contains notices for preservation of claims presented for recording, and has designated columns with claimant names, the names of each owner of title, the deed book number and page where the instrument containing the claim has been recorded, and the type of claim asserted designated on the left-hand page, and on the opposite page on the corresponding line, a pertinent description of the property affected as it appears in the notice.²¹

Recording fees

The bill eliminates the fees for two methods of recording instruments that appear to be obsolete: The \$4 base fee and \$4 housing trust fund fee for manual or typewritten recording of an assignment or satisfaction of a mortgage or lease or any other marginal entry, and the \$2 base fee and \$2 housing trust fund fee for recording manually any plat not exceeding six lines, and a base fee of 10¢ and a housing trust fund fee of 10¢ for each additional line.²²

¹⁶ R.C. 1513.37, 2505.13, 2937.27, 3929.18, 4141.23.

¹⁷ R.C. 317.09.

¹⁸ R.C. 317.22, 2113.62, 5302.17, 5302.171, 5302.222, and 5309.13.

¹⁹ R.C. 1337.08.

²⁰ R.C. 5301.52 and 5302.15.

²¹ Repeal of R.C. 317.201; R.C. 5301.52 and 5301.56.

²² R.C. 317.32.



The bill requires the county recorder to charge fees for recording notices of a possessory interest in land. Current law provides that charging a fee for recording the notices is permissive.²³

Elimination of fine

The bill repeals a law that requires a county recorder who records a plat contrary to the platting laws of municipal corporations to forfeit and pay not less than \$100 nor more than \$500, to be recovered with costs in a civil action by the prosecuting attorney in the name and for the use of the county.²⁴

General recording changes

The bill eliminates a requirement that an instrument regarding real estate or personal property be of a quality of paper that permits the legible reproduction of the instrument by photographic or microphotographic processes. Under the bill, the instrument must be of a quality that permits its legible reproduction.²⁵

The bill refers to recording "instruments" rather than "papers." The bill allows a county recorder to transcribe defaced or injured records not only into new books, as allowed by current law, but also in other media.²⁶

The bill eliminates requirements to record the name of a person who prepared an instrument at the conclusion of the instrument (upon the instrument is sufficient), and to enter the fee charged on the margin of the folio upon which the filing or recording of an instrument is entered.²⁷ The bill also eliminates requirements that each instrument must have a separate series of file numbers and be filed separately, must be kept on file in the same numerical order for easy reference, and that the county recorder must give to a person presenting a deed or other written instrument for recording, without charging a fee, a brief description of the premises.²⁸

²³ R.C. 5301.52.

²⁴ Repeal of R.C. 711.12.

²⁵ R.C. 317.112.

²⁶ R.C. 317.07 and 317.29.

²⁷ R.C. 317.111, and 317.26.

²⁸ R.C. 317.12.



Notices of failure to file

Any time a lessee of natural gas and oil lands fails to give notice to the lessor that the lease has not been forfeited by the lessee for failure to abide by the lease's terms, the bill requires the lessor to file with the county recorder a notice of the lessee's failure to file. The bill requires that the notice of failure to file contain a statement that the person filing the notice is the lessor or the lessor's successors or assigns, the document number or volume and page of the lease record where the oil or gas lease is recorded, a general description of the land, and a statement on the notice that the lease is cancelled pursuant to an affidavit of forfeiture recorded as a specific document number or in the official record/lease volume, indicating the page. Current law requires only that the lessor cause the county recorder to note upon the margin of the record of the lease a statement that the lease is cancelled pursuant to an affidavit of forfeiture recorded in a lease volume, indicating the page. The bill eliminates the requirement that certain notations be entered on affidavits of forfeiture in a county in which the county recorder uses the microfilm process and the requirement that the affidavit be recorded in the record of leases. The bill also eliminates the county recorder's authority to charge a fee for recording these notations, and a provision stating that the record of the lease cannot be received in evidence in any Ohio court.²⁹

Likewise, if the holder of a mineral interest fails to notify the owner of surface lands that the mineral interest has not been abandoned, the bill requires the owner of the surface lands who is seeking to have the mineral interest deemed abandoned and vested in the owner to file in the office of the county recorder a notice of failure to file. The notice must contain a statement that the person filing the notice is the owner of the surface of the lands subject to the mineral interest, a description of the surface of the land that is subject to the mineral interest, and a statement that the mineral interest is abandoned pursuant to an affidavit of abandonment, referring to the volume and page wherein the affidavit is recorded. Current law requires only that the owner cause the county recorder to memorialize the record on which the severed mineral interest is based with a statement that the mineral interest is abandoned pursuant to an affidavit of abandonment, referring to the volume and page wherein the affidavit is recorded. The bill eliminates the requirement for memorials to appear on affidavits of abandonment in a county in which the county recorder uses the microfilm process, instead of on the record on which the severed mineral interest is based.³⁰

²⁹ R.C. 5301.332.

³⁰ R.C. 5301.56.



Notices or discharges of recognizance liens; disposal of paper versions

The bill authorizes the county recorder to use any nonpaper electronic or magnetic medium specified in existing law³¹ to record notices of recognizance liens (bail) and notices of their discharge. If the county recorder wishes to dispose of paper versions of the notices because they are no longer needed in that format, the county recorder must request the county records commission to revise the county's schedule of records retention and disposal to provide for the disposal of the paper records. Current law requires the county recorder to record the notices in a book or record in which the notices are indexed, and does not address disposal of the paper version of the notices.³²

Adoption of standards for conveyances

The bill changes the current requirements for the county auditor and county engineer, by written agreement, to adopt standards governing conveyances of real property in the county and a conveyance must comply with those standards by adding that a conveyance must also comply with Chapter 317. of the Revised Code (the County Recorder's Law), and the local county recorder requirements. The county auditor cannot transfer, and the county recorder is prohibited from recording, any conveyance that does not comply with those standards. Currently, the county auditor and county engineer adopt those standards without input from the county recorder, and the county auditor is prohibited from transferring any conveyance that does not meet those standards.³³

Registered land

Title examiner's report

Under continuing law, whenever registered land is sold to satisfy any judgment or order of a court, or title is transferred by judgment of a court, if the purchaser files a certificate of sale and a certified copy of the order of sale with the county recorder, the purchaser is entitled to have the property transferred to the purchaser and a new certificate of title issued for the land. When registered land is sold by the sheriff under order of a court, the sheriff must file a certificate of sale and a certified copy of the order of sale and return thereof with the county recorder. In this case, the purchaser is entitled

³¹ R.C. 9.01. The media specified are any photostatic, photographic, miniature photographic, film, microfilm, or microphotographic process; perforated tape, magnetic tape, other magnetic means, electronic data processing, or machine readable means; graphic or video display; or any combination of those processes, means, or displays.

³² R.C. 2937.27.

³³ R.C. 319.203.



to have the property transferred to the purchaser and a new certificate of title issued for the land. The bill provides that this continuing law and its applications are not superseded, negated, or amended, in whole or in part, by a law which provides that in any suit or proceeding in which registered land may be partitioned or sold, or the title to any part thereof, or to any interest in or lien upon the land may be transferred or affected by the order of the court, that no confirmation of the partition, sale, or transfer or decree affecting title can be entered by the court until the title examiner's report is filed, showing that all persons necessary to the suit or proceeding have been made parties and properly brought before the court, and that the proceedings and sale have in all respects been pursuant to law and the court's orders.³⁴

Abolishing land registration

The bill makes changes to the current law pertaining to abolishing the system of registering land titles by counties. That law generally allows boards of county commissioners, after holding a public hearing and following other procedures, to abolish land registration in their counties; it also permits persons with registered land in a county to seek a restraining order against the abolition of the land registration system in that county, and prescribes the effects of the abolition of land registration in a county. The authority for counties to abolish land registration became effective in February of 1991.

The bill eliminates the ability for a person with registered land in the county to seek a restraining order against the abolition of the land registration system in that county by repealing the provision of law that creates the authority for the civil cause of action.³⁵ The existing cause of action must be brought not later than two months after the adoption of a resolution of abolition by any person having registered land in the county. The board of county commissioners and the county recorder must be named defendants. The plaintiff must describe with particularity in the complaint the error in the proceedings before the board, how the findings of the board resulting in adoption of the resolution of abolition were unreasonable, or why abolition of land registration is constitutionally invalid.

Because the civil action will no longer exist, the bill amends the provision of law concerning the timing of the implementation of abolishment of registration. Removing the time otherwise allowed by current law to allow for the commencement of the civil

³⁴ R.C. 5309.64; R.C. 5309.61, not in the bill.

³⁵ R.C. 5310.37, repealed.



action and its appeal, the bill establishes the date of implementation as no later than one month after the date of the adoption of the resolution of abolition.³⁶

The bill eliminates the current requirement for notice by mail to property owners and adverse claimants of the public hearing on the proposal to abolish land registration in the county. The bill retains notice by publication in a newspaper of general circulation in the county or the general notice provision in current law that also contemplates Internet publication.³⁷

Land title recordation or registration

In Ohio, there are two systems of keeping records of land titles: the traditional recordation system and the Torrens registration system. The traditional system merely records "evidence" of title (for example, deeds) from which the prospective buyer of an interest in land must personally conclude whether the seller actually owns the interest that the buyer wants to buy and, therefore, can sell the interest to the buyer without the buyer risking that someone else, who actually owns the interest, could take it away from him or her. The Torrens system does not require the buyer of an interest in land to draw such a conclusion; it tells the buyer through notations on a certificate of registration whether or not the seller actually owns the interest the buyer wants to buy. Casner & Leach, Cases and Text on Property, page 918 (1969).

Ohio Torrens land registration act

Under the Ohio Torrens land registration act, an owner of land may, by judicial proceeding, obtain a conclusive determination of the status of the title to his/her land. The court's decree of registration determines all ownership interests in the land, and all claims, liens, or charges against it. The decree is recorded in the county recorder's office in the registered land records. Thereafter, the land may be transferred or otherwise dealt with only on the registered land records and in the manner provided by law. The county recorder maintains on file in the recorder's office an original certificate of title that shows all interests in and against the land. The recorder will issue a duplicate certificate of title to the owner, and also to any holder of an interest against the land who requests a duplicate for his/her particular interests.

The certificate of title is exclusive and conclusive proof of the ownership of the land. It is similar in this respect to an automobile certificate of title or a stock certificate. A landowner holds registered land free and clear of all other interests, except as noted on the registration certificate or otherwise preserved by statute. No interest in the land

³⁶ R.C. 5310.38.

³⁷ R.C. 5310.35.



can be transferred voluntarily unless the owner, or holder of the interest, surrenders his duplicate certificate of title. An involuntary lien, such as a judgment or mechanic's lien, is effective only when noted on the original certificate in the recorder's office in the manner provided by the Ohio Torrens land registration act.

Because the certificate is conclusive, there is a possibility that an owner may be deprived of his interest by fraud or a recorder's mistake. An assurance fund has been established in the state treasury to protect persons who may be deprived of their interest in land by registration proceedings or transfers. A person who is deprived of his land by the judicial proceeding for land registration described above may be compensated from the assurance fund for the full amount of his loss.

Any person owning real estate for which the title is registered may request that the real estate be withdrawn from registration by presenting to the county recorder an affidavit of intention to withdraw, with his owner's duplicate certificate of title attached. The recorder must "register or record" the affidavit and, upon "order of the court" cancel the certificate of record. Thereafter, title to the real estate is to be considered "the same as other unregistered lands."

Eliminate requirement to record instrument as a mortgage

Continuing law requires the Bureau of Workers' Compensation to file with the county recorder an affidavit showing when an application for compensation or benefits is filed with the Bureau or the Industrial Commission against an employer who has not complied with the Worker's Compensation Law. The affidavit constitutes a lien upon the employer's real property and tangible personal property. The county recorder must accept and file the affidavit, and the bill requires that it be recorded and indexed in the official records, rather than filing the affidavit as a chattel mortgage and indexing it as a mortgage on real estate and as a chattel mortgage. The bill eliminates the term "tangible" so that the lien is on the employer's real estate and personal property.³⁸

The Administrator of Workers' Compensation must file with the county recorder a certificate of the amount of premium due from an employer, and that amount is a lien against the employer's real and personal property in the county. The bill requires the county recorder to record and index the certificate in the official records. Current law requires the county recorder to record the certificate as a mortgage on real estate, file it as a chattel mortgage, and index it as a mortgage on real estate and as a chattel mortgage.³⁹

³⁸ R.C. 4123.76.

³⁹ R.C. 4123.78.



Special taxing district records commission

Under the bill, a special taxing district, the territory of which is coextensive with the territorial limits of a county, upon mutual assent between the special taxing district and the board of county commissioners, can designate the county records commission as the records commission for the special taxing district. The designation authorizes the county records commission to exercise all of the duties and responsibilities of a special taxing district records commission. The mutual assent can be manifested in an agreement defining the terms and conditions under which the county records commission is to perform public records-related functions, including establishing records retention and destruction schedules, on behalf of the special taxing district.

Miscellaneous revisions

Under continuing law, the legislative authority of a municipal corporation may, upon petition of a property owner and following a hearing, by ordinance, declare a street or alley vacated or narrowed, or change its name; if two or more streets, avenues, or alleys have the same name, the municipal corporation, may, by ordinance, and without petition therefore, change their names so as to leave only one to be designated by the original name. The bill requires that the legislative authority's original ordinance, or a certified copy of it, be recorded in the official records of the county recorder.⁴⁰

Continuing law requires the clerk of court to issue a notice of discharge of a supersedeas bond that is issued as a certificate of lien on land. The bill requires the clerk of court to file the notice of discharge in the county recorder's office, rather than merely authorizing the clerk to do so. The bill eliminates language stating that the fee charged for filing and indexing the certificate covers the filing and indexing of the notice of discharge.⁴¹

Technical revisions

The bill amends various Revised Code sections to change division references, to gender neutralize the law, and to eliminate references to the two laws repealed by the bill.⁴² The bill also eliminates an obsolete reference to collecting low-and moderate-

⁴⁰ R.C. 723.04 and 723.05.

⁴¹ R.C. 2505.13.

⁴² R.C. 317.02, 317.04, 317.05, 317.19, 317.28, 317.31, 317.35, 707.09, 1311.06, 1311.35, 5301.01, 5301.25, 5301.332, 5301.56, and 5721.35.



income housing trust fund fees under a corporation franchise tax provision that has been repealed.⁴³

Commercial activity tax

Grain handler exclusion

The bill accelerates the application date of a CAT exclusion for gross receipts of grain handlers from the sale of grain. The amendment allows grain handlers to exclude such receipts for tax periods beginning on or after January 1, 2014.⁴⁴ Under H.B. 59 of the 130th General Assembly, grain handlers were authorized to exclude such receipts for tax periods beginning on or after July 1, 2014.

Corporation franchise tax

Historic rehabilitation tax credit claims

Continuing law establishes the historic building rehabilitation tax credit, which is a refundable credit equal to 25% of the qualified expenditures made for rehabilitating a building of historical significance in accordance with preservation criteria as determined by the State Historic Preservation Officer. A person seeking the credit is required to apply to the Director of Development Services, who evaluates the application and may approve a credit by issuing a tax credit certificate. The credit may be awarded and claimed against the corporation franchise tax (CFT).

The CFT and the accompanying CFT forms necessary for a CFT taxpayer to claim the historic rehabilitation tax credit expire in tax year 2014 (CFT tax years correspond to calendar years). A taxpayer that had a taxable year – which is not a tax year, but a 12-month accounting period – that began in the middle of 2013 would not be able to claim the historic rehabilitation tax credit for tax year 2014. Since the CFT no longer exists after tax year 2013, the bill authorizes such a taxpayer whose credit certificate was effective before 2013 to claim the credit by the end of 2013 as though the taxpayer were claiming the credit for tax year 2014 or thereafter.⁴⁵

Continuation of qualifying pass-through entity withholding tax

Continuing law imposes a withholding tax on pass-through entities having at least one investor that is not an individual and that may not have any taxable nexus

⁴³ R.C. 317.36.

⁴⁴ Section 3 (Section 803.90 of H.B. 59 of the 130th General Assembly).

⁴⁵ Section 5.



with Ohio other than an interest in the entity ("qualifying investor"). The purpose of the tax is to ensure compliance by requiring the entity to pay tax on behalf of the investors; investors receive a credit against their separate liabilities for the withholding tax that the entity pays. The tax is computed on the basis of the total ownership share of the qualifying investors. The tax applies to the net sum of such owners' distributive shares of the pass-through entity's income, gain, expense, and loss apportioned to Ohio.

Under current law, the rate of the withholding tax cross-references the former rate of the corporation franchise tax (CFT) for nonfinancial corporations. That rate is 8.5%, but will no longer apply under modifications to the CFT by H.B. 510 of the 129th General Assembly. That act repealed the CFT for all taxpayers for tax years 2014 and thereafter. The bill allows the qualifying pass-through entity withholding tax to continue after the CFT expires by removing the soon-to-expire cross reference and specifying that the rate of the withholding tax remains 8.5%.⁴⁶

Income tax

Bracket and exemption inflation adjustment

Under current law, personal income tax brackets and the amount of the personal and dependent income tax exemptions are adjusted each taxable year according to the increase or decrease in the inflation rate as measured by the GDP deflator. The bill clarifies that, for each taxable year that the inflation indexing mechanism is statutorily suspended or does not increase as a result of stagnant or decreasing inflation, the brackets and exemptions remain at the amount the brackets and exemptions were in the preceding taxable year rather than returning to the amounts prescribed by statute during those taxable years.⁴⁷ Returning the brackets and exemptions to those statutorily prescribed amounts would have reduced the income necessary to qualify for each tax bracket and reduced the amount of the personal and dependent exemptions, thus causing taxes to increase in many cases.⁴⁸

NOAA and PHS income tax deduction

H.B. 59 authorized an income tax deduction for the retirement pay of a taxpayer that served in the Commissioned Corps of the NOAA or the PHS. That bill gave two apparently conflicting taxable years for which the deduction would begin to apply – taxable years beginning after January 1, 2013, and taxable years beginning after January

⁴⁶ R.C. 5733.41.

⁴⁷ H.B. 59 suspended indexing for taxable years 2013, 2014, and 2015.

⁴⁸ R.C. 5747.02 and 5747.025.



1, 2014. The bill resolves the conflict by authorizing a taxpayer to take the deduction for taxable years beginning on or after January 1, 2013.⁴⁹

Property tax

Application of partial property tax "rollbacks"

Continuing law provides a 10% partial property tax reduction, commonly called a "rollback," on all real property that is not intended primarily for use in a business activity and a 2.5% rollback on any homestead that is occupied by the homeowner. The state is required to reimburse local governments and schools for the revenue lost because of the rollbacks. H.B. 59 limited the application of the 10% and 2.5% rollbacks by specifying that they could not be applied to reduce the taxes due on new or replacement levies approved at elections held on or after September 29, 2013 (that act's 90-day effective date) or taxes due on taxes levied within the 10-mill limitation ("inside millage") levied for the first time after tax year 2013.

The bill expands the application of the 2.5% and 10% real property tax rollbacks to inside millage levied for the first time after 2013.⁵⁰

Homestead exemption

Overview of homestead exemption

Under continuing law, the homestead exemption is a property tax credit equal to the taxes that would be charged on up to \$25,000 of the true value of the property of qualified homeowners. ("True value" is the appraised fair market value.) The credit essentially exempts \$25,000 of the value of a homestead from taxation. It also applies to manufactured and mobile homes regardless of whether they are taxed as real property or taxed under the manufactured homes tax (except that manufactured and mobile homes are assessed at 40% of cost or market value and are depreciated). The amount of the tax reduction for a homestead depends on the local tax rate: the higher the tax rate, the greater the tax reduction. The homestead exemption is available only to homeowners who are 65 years of age or older, or permanently and totally disabled, or at least 59 years old and the surviving spouse of an individual who previously received the exemption.

⁴⁹ Section 3 (Section 803.80 of H.B. 59 of the 130th General Assembly).

⁵⁰ R.C. 319.302.



Surviving spouse exclusion from income limit

Under recent changes to the homestead exemption in H.B. 59, the homestead exemption is available to owners who have an Ohio adjusted gross income of \$30,000 or less, as computed for state income tax purposes. However, elderly or disabled homeowners who received the exemption for tax year 2013 (or tax year 2014 for homeowners who live in a manufactured home taxed under the manufactured home tax) are "grandfathered" and may continue to claim the homestead exemption even if the homeowner's income exceeds \$30,000.

The bill additionally excludes from the \$30,000 income limitation a surviving spouse of any "grandfathered" individual, provided the surviving spouse is aged 59 or older at the time the deceased spouse dies.⁵¹

Term of tax levies benefitting county zoos

Continuing law allows a board of county commissioners to propose and, with the approval of voters, levy a property tax for the benefit of a zoo. The zoo may be operated and maintained by the county itself or by a nonprofit corporation organized to promote the natural sciences.

Under current law, the board of county commissioners may propose a zoo levy for a term of up to ten years. The bill instead allows the board to propose the levy for any number of years, or for a continuing period of time.⁵²

Convention center property tax exemption

The bill authorizes a property tax exemption for a convention center or arena located in, and owned by, a city in a county with a population of between 500,000 and 600,000. Under the act, the convention center or arena may be leased to or operated or managed by another person and still qualify for exemption, as long as it is owned by the qualifying city. For purposes of the exemption, the population of a county is determined by reference to the most recent federal decennial census at the time of the construction of the convention center or arena.⁵³

The exemption applies in tax year 2013 and thereafter.⁵⁴

⁵¹ R.C. 323.152 and 4503.065.

⁵² R.C. 307.76 (not in the bill) and 5705.19.

⁵³ R.C. 5709.084

⁵⁴ Section 3.



Continuing law exempts certain convention centers and arenas, with the exemption depending on the population of the county or city in which it is located and whether it is owned or leased by a city, county, or convention facilities authority.

Sales and use tax

Transfers of remote seller use tax to Income Tax Reduction Fund

H.B. 59 earmarked any new Ohio use tax collections that might come about from "remote sellers" – generally online and catalog retailers – for deposit in the Income Tax Reduction Fund (ITRF). Under continuing law, "surplus revenue" that is available after the balance in the Budget Stabilization Fund equals 5% of annual General Revenue Fund expenditures and certain inter-year fund carryovers and reserves are made is credited to the ITRF, which is used to fund temporary income tax rate reductions. The "new" use tax collections are those that would ensue if Congress enacts pending "Marketplace Fairness" legislation to let qualifying states compel remote sellers to collect use taxes from customers. The remote seller use tax collections are the collections that would be remitted by remote sellers in excess of (1) remittances by sellers that collect use taxes under the Streamlined Sales and Use Tax Agreement and (2) refunds issued to remote sellers.

As required by H.B. 59, these transfers to the ITRF would be made twice per year. The bill suspends any such transfer until July 1, 2015.⁵⁵

HISTORY

ACTION	DATE
Introduced	02-20-13
Reported, H. State and Local Government	05-15-13
Passed House (95-0)	06-05-13
Reported, S. Public Safety, Local Gov't & Veterans Affairs	---

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⁵⁵ R.C. 5741.03.

