



Ohio Legislative Service Commission

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Fiscal Note & Local Impact Statement

Bill: Sub. S.B. 124 of the 128th G.A.

Date: December 16, 2009

Status: As Reported by House Civil & Commercial Law

Sponsor: Sens. Faber and Schiavoni

Local Impact Statement Procedure Required: No — No local cost in the As Introduced version

Contents: Transfer on death designation, mortgage lending laws, Board of Tax Appeals, county Delinquent Tax and Assessment Collection (DTAC) Fund, county recorder nonconforming document fees, declares an emergency

State Fiscal Highlights

STATE FUND	FY 2010	FY 2011	FUTURE YEARS
General Revenue Fund			
Revenues	- 0 -	- 0 -	- 0 -
Expenditures	Approximately \$0.5 million decrease in local government reimbursements; Transfers to Fund 5GX0 totaling approximately \$0.5 million	Approximately \$1 million decrease in local government reimbursements; Transfers to Fund 5GX0 totaling approximately \$1 million	Approximately \$1 million or more decrease in local government reimbursements; Transfers to Fund 5GX0 totaling approximately \$1 million or more
Tax Appeals Administration Fund (Fund 5GX0)			
Revenues	Gain from GRF transfers totaling approximately \$0.5 million	Gain from GRF transfers totaling approximately \$1 million	Gain from GRF transfers totaling approximately \$1 million or more
Expenditures	\$0.5 million increase	\$1 million increase	\$1 million or more increase
Consumer Finance Fund (Fund 5530) – Department of Commerce			
Revenues	Potential minimal annual loss		
Expenditures	Potential minimal annual increase		
Low- and Moderate-Income Housing Trust Fund (Fund 6460) – Department of Development			
Revenues	Potential, likely no more than minimal, annual loss in certain recording fees		
Expenditures	No discernible effect		

Note: The state fiscal year is July 1 through June 30. For example, FY 2010 is July 1, 2009 – June 30, 2010.

Small Claims Division – Board of Tax Appeals

- The state would retain about \$1 million each year, currently paid to local governments as reimbursement for the 10% tax rollback on residential and agricultural real property. This amount could be expected to grow in most future years.

- These funds would be transferred from the GRF to a new fund, the Tax Appeals Administration Fund, for use in paying part of the operating costs of the Board of Tax Appeals (BTA). Expenditures in excess of H.B. 1 appropriations would require Controlling Board approval.
- Establishment of the Small Claims Division within BTA, with procedures to expedite consideration of cases, may help BTA reduce, or slow the growth of, its backlog of cases.
- The bill declares the intent of the General Assembly that: (1) BTA consider rule or recommended legislative changes to expedite handling of cases and (2) the funding mechanism for BTA be reexamined during the budget process for the next biennium.

SAFE Act implementation – Department of Commerce

- The SAFE Act provisions of the bill could lead to a small decline in licensing and registration fees and a small increase in costs for overseeing mortgage lenders, mortgage brokers, and their associated loan originators. These activities are supported by the Consumer Finance Fund (Fund 5530).

Low- and Moderate-Income Housing Trust Fund

- The bill amends current law to allow a county recorder to accept for filing certain nonconforming instruments or documents without charging the additional \$10 Low- and Moderate-Income Housing Trust fee otherwise required to be collected for nonconforming instruments or documents. As of this writing, it appears that the potential or likely fiscal effect of this provision will be a no more than a minimal annual decrease in the amount of additional fees that would otherwise have been collected for the Low- and Moderate-Income Housing Trust Fund.

Local Fiscal Highlights

LOCAL GOVERNMENT	FY 2010	FY 2011	FUTURE YEARS
Counties (probate division of courts of common pleas)			
Revenues		- 0 -	
Expenditures	Potential savings effect, annual magnitude uncertain		
School Districts and Other Units of Local Government			
Revenues	Approximately \$0.5 million loss from reduced reimbursement for 10% rollback	Approximately \$1 million loss from reduced reimbursement for 10% rollback	Approximately \$1 million or more loss from reduced reimbursement for 10% rollback
Expenditures	- 0 -	- 0 -	- 0 -
County and Municipal Criminal Justice Systems (mortgage lending law violations)			
Revenues	Potential, likely no more than minimal, annual gain in court costs and fines		
Expenditures	Potential, likely no more than minimal, annual increase to prosecute mortgage lending law violations		
Hamilton County DTAC Fund			
Revenues	- 0 -	Potential loss in surplus balance	- 0 -
Expenditures	- 0 -	Potential decrease, commensurate with revenue loss	- 0 -
Hamilton County Prosecuting Attorney or Treasurer's Office			
Revenues	- 0 -	Potential gain from DTAC surplus balance	- 0 -
Expenditures	- 0 -	Potential increase, commensurate with revenue gain	- 0 -
County Recorders (nonconforming document filing fees)			
Revenues	Potential, likely no more than minimal, annual loss in certain document filing fees		
Expenditures	Potential decrease, commensurate with annual revenue loss		

Note: For most local governments, the fiscal year is the calendar year. The school district fiscal year is July 1 through June 30.

Transfer on death

- If, as intended, the bill improves the efficiency of processing matters involving the transfer of interest in real property through a transfer on death instrument, then the probate division of courts of common pleas may realize some savings in their annual operating costs, the magnitude of which is problematic to quantify in terms of dollars and cents.

Small Claims Division – Board of Tax Appeals

- Diversion of about \$1 million per year from state reimbursements of school districts and other units of local government for the 10% rollback would reduce revenues to these units of local government. This revenue loss could be expected to increase in most future years.

SAFE Act prohibition

- The bill prohibits a person from acting as a mortgage broker or loan originator unless registered with the National Mortgage Licensing System and Registry (NMLS&R), a violation of which is a first degree misdemeanor carrying a maximum jail sentence of six months and a maximum fine of \$1,000. This may create some minimal expenses for county and municipal criminal justice systems to prosecute, adjudicate, and sanction offenders, and generate a minimal amount of local court cost and fine revenues.

Hamilton County DTAC Fund

- The Hamilton County prosecuting attorney or treasurer may use for office operating expenses up to half of Delinquent Tax and Assessment Collection Fund (DTAC) appropriations in excess of amount needed for collection of delinquent property taxes.

County recorder fees

- The bill amends current law to allow a county recorder to accept for filing certain nonconforming instruments or documents without charging the additional \$10 fee otherwise required to be collected for nonconforming instruments or documents. As of this writing, it appears that the potential or likely fiscal effect of this provision will be a no more than minimal annual decrease in the amount of additional fees that would otherwise have been collected for the county recorder's services.

Detailed Fiscal Analysis

Overview

Transfer on death

The bill changes the process by which property may be transferred upon the death of an individual. More specifically, the bill changes the transfer on death designation instrument from a deed to an affidavit, and allows an individual who owns real property or any interest in real property as a survivorship tenant to execute a transfer on death designation affidavit.

Under existing law, any person who owns real property or any interest in real property may create an interest in the real property transferable on death by executing and recording a deed conveying that person's entire, separate interest in the real property to one or more individuals, and designating one or more other persons, identified in the deed by name, as transfer on death beneficiaries.

Board of Tax Appeals

The bill creates the Tax Appeals Administration Fund, from which part of the costs of operating the Board of Tax Appeals (BTA) are to be paid, and establishes a Small Claims Division of the Board of Tax Appeals, including criteria for appeals to be heard in that Division.

Federal SAFE Act

The bill modifies mortgage lending laws as they relate to the SAFE Act enacted by Congress in July 2008.

DTAC Fund

The bill temporarily allows the prosecutor or treasurer of Hamilton County to determine the amount of money appropriated to the respective office from the county Delinquent Tax and Assessment Collection (DTAC) Fund.

Transfer on death

State and local fiscal effects

Political subdivisions. Based largely on discussions with staff of the Ohio State Bar Association, it appears likely that the primary effect of the bill will be to streamline the processing of matters handled by the probate division of the courts of common pleas that involve the transfer of interest in real property through a transfer on death instrument. The potential resulting savings effect for any given probate division is rather problematic to quantify, but would involve some level of administrative savings in court time and expense related to greater efficiency in the processing of cases.

State government. The bill will not directly affect the revenues and expenditures of the state.

Board of Tax Appeals

Tax Appeals Administration Fund

Transfers to the Tax Appeals Administration Fund from the GRF during each fiscal year are to equal 0.1% of the amount of the 10% rollback for residential and agricultural real property taxes for the preceding tax year. This amount is to be deducted from reimbursements from the state to school districts and other units of local government, which are paid from the GRF, in the same manner as the Property Tax Administration Fund derives revenue from deductions from these reimbursements under current law. The bill directs the Tax Commissioner and Director of Budget and Management to make the certifications and transfers necessary to establish this funding mechanism. The bill does not make any appropriations for BTA, nor does it increase any existing appropriations. Effectively, this means that expenditures by the BTA in excess of amounts appropriated in the biennial budget act, H.B. 1, would require approval by the Controlling Board.

Specifically, the bill requires the Tax Commissioner to certify between July 1 and July 15 the sum for all taxing districts of 0.1% of the 10% real property tax rollback. The Director of Budget and Management is to transfer one-fourth of this amount from the GRF to the Tax Appeals Administration Fund on or before August 1, November 1, February 1, and May 1. Before the end of the fiscal year, the Tax Commissioner is to certify the sum of the amounts by which the amounts certified at the beginning of the fiscal year for each tax district exceeded the actual distributions to the tax district. The Director of Budget and Management is to transfer that sum from the Tax Appeals Administration Fund to the GRF.

Because the time for the August 1 and November 1 payments is already past in FY 2010, a provision in temporary law in the bill provides that in FY 2010, the transfers from the GRF to the Tax Appeals Administration Fund are to be made on or before February 1 and May 1, based on computations that the Tax Commissioner is to make between January 1 and January 15. The bill declares an emergency, and these provisions would go into effect immediately. However, the bill also provides that if the emergency clause is not enacted, so that the effective date of this part of the bill is delayed for 90 days, then one-half of the amount certified for the fiscal year is to be transferred from the GRF to the Tax Appeals Administration Fund, on or before May 1, based on certification by the Tax Commissioner between April 1 and April 15.

Department of Taxation data indicate that approximately \$991,000 of tax relief for the 10% rollback was distributed during calendar year 2008. Although the amount of taxes levied and the amount of the 10% rollback generally increase from year to year, recent declines in real property market values may have slowed or halted these increases, or resulted in declines. A diversion to the Tax Appeals Administration Fund of 0.1% of state payments reimbursing local governments for the 10% rollback is estimated to raise approximately \$1 million annually, an amount that could be expected

to grow in most future years. For FY 2010, the amount would be half of this, or approximately \$500,000, whether the bill declares an emergency or not.

Small Claims Division of the Board of Tax Appeals

The Small Claims Division established by the bill in BTA would have jurisdiction over any proceeding commenced for residential or agricultural real property qualifying for the 10% rollback. In addition, the Small Claims Division would have jurisdiction over appeals from a decision of a municipal board of appeal or a final determination by the Tax Commissioner, if the amount in controversy does not exceed \$10,000, excluding interest and penalty. BTA, by rule, may modify the \$10,000 threshold. BTA is required to reassign cases to the regular docket at the request of any party to a dispute, or if the appeal presents an issue of public or great general interest, or presents a constitutional issue, or does not meet the requirements for consideration in the Small Claims Division.

BTA is to adopt rules for informal review of taxpayers' appeals in the Small Claims Division. Procedures may include telephonic hearings. Decisions and orders of the Small Claims Division are to be conclusive and not subject to appeal, and are not to be considered as precedent for other cases. Representation of any party by a licensed attorney would be permitted but not required.

These changes may help BTA to process more quickly cases qualifying to be considered in the Small Claims Division, and so may reduce, or slow the growth of, the agency's swelling backlog of cases.

Intent of the General Assembly

In addition to the foregoing, the bill declares the intent of the General Assembly that BTA consider modification or adoption of rules and recommendations for legislation with respect to the conduct of appeals, in light of the rise in the number of appeals and to facilitate resolution of pending appeals. Such rule changes or legislation may increase the efficiency with which BTA is able to process cases. The bill also declares the intent of the General Assembly that the funding mechanism for BTA be reexamined during the budget process for the next biennium, including replacement of some or all of the funding mechanism established by this bill for the Tax Appeals Administration Fund with other funding sources, such as filing fees. Historically and at present, parties to disputes have not been charged fees to appeal their cases to BTA.

SAFE Act implementation

In July 2008, Congress passed the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (SAFE Act) as part of the Housing and Economic Recovery Act of 2008. The SAFE Act requires all loan originators to register with the newly created National Mortgage Licensing System and Registry (NMLS&R) and creates minimum standards for licensure of state-regulated loan originators. Implementing legislation for Ohio was included as part of H.B. 1 and becomes effective on January 1, 2010. Ohio will begin using the NMLS&R on January 4, 2010, on which date all applications for

registration or licensure under the Ohio Mortgage Broker Act (OMBA) and Ohio Mortgage Loan Act (OMLA) must be submitted electronically through the new system.

The bill contains a number of changes to the OMBA and OMLA that largely make clarifications or corrections to the implementation language included in H.B. 1, many of which are included to conform to federal law. Some of these provisions, discussed below, may have a minimal fiscal effect. To ensure all of the above changes go into effect before January 1, the bill declares an emergency.

First, the bill prevents an OMBA or OMLA license or registration applicant from receiving a license or enables the Department of Commerce's Division of Financial Institutions to proceed with disciplinary action if an applicant or licensee has pleaded "no contest" to certain crimes. This is required by the federal SAFE Act. Currently, the Division takes disciplinary action only against those that have pleaded guilty to or have been convicted of such crimes. Because this would disqualify perhaps a handful of additional individuals from licensure or registration, the provision could reduce licensing revenue deposited into the Consumer Finance Fund (Fund 5530) by a small amount. The Division might also incur some new, but likely minimal, expenses for reviewing licenses and conducting additional disciplinary hearings.

Second, the bill prohibits a person from acting as a mortgage broker or loan originator unless registered with the NMLS&R, a violation of which is a first degree misdemeanor carrying a maximum jail sentence of six months and a maximum fine of \$1,000. This may create some minimal expenses for county and municipal criminal justice systems to prosecute, adjudicate, and sanction offenders, and generate a minimal amount of local court cost and fine revenues. The state may collect a negligible amount of additional court cost revenue annually for deposit in the Indigent Defense Support Fund (Fund 5DY0) and the Victims of Crime/Reparations Fund (Fund 4020).

Hamilton County DTAC Fund

The bill allows a prosecuting attorney or treasurer of a county with a population greater than 800,000 but less than 900,000 to determine that the amount of money appropriated to that official's office from the county Delinquent Tax and Assessment Collection (DTAC) Fund exceeds the amount required to be used by that office for collection of delinquent property taxes and assessments. Delinquent property taxes include real property, personal property, and manufactured and mobile home taxes and assessments including proceedings for foreclosure of the state's lien for such taxes. The prosecuting attorney or treasurer may spend up to half of this excess to pay the office's operating expenses otherwise payable from the county general fund. In the 2000 Census, as well as in the Census Bureau's latest estimates of county populations, for 2008, only Hamilton County fell within these population limits. This provision expires December 31, 2011.

County recorder fees

Current law stipulates that instruments or documents presented for recording by a county recorder be prepared in accordance with particular formatting standards. Recorders are required to accept for recording an instrument or document that does not conform to these formatting standards. To record a nonconforming instrument or document, a county recorder is required to charge additional fees as follows: an additional base fee of \$10 for the recorder's services and a \$10 fee for deposit in the state's Low- and Moderate-Income Housing Trust Fund. The bill amends current law to allow a county recorder to accept for filing certain nonconforming instruments or documents without charging the fees otherwise required to be collected for nonconforming instruments or documents.

State and local fiscal effects

As of this writing, it appears that the potential or likely fiscal effect of this provision will be a no more than minimal annual decrease in the amount of additional fees that would otherwise have been collected for the recorder's services and the Low- and Moderate-Income Housing Trust Fund.