Bill Analysis

Peter A. Cooper *Legislative Service Commission*

H.B. 607

124th General Assembly
(As Introduced)

Reps. Trakas, Carmichael, McGregor, Allen, Koziura, D. Miller

BILL SUMMARY

- Expands the range of permissible investments for funds credited to the county treasury.
- Prohibits a party holding a delinquent real property tax certificate from contacting the property owner during the first year after purchasing the certificate.
- Permits the holder of a delinquent tax certificate purchased at public auction (rather than through private sale) to pursue a private suit against the property in order to recover the delinquent taxes represented by the certificate, rather than requesting the county prosecutor to undertake the suit.
- Modifies the amount that must be paid in order to extinguish delinquent tax certificates and redeem the delinquent property, and modifies requirements for bidding on tax certificates, requirements for notifying property owners and others of the sale of the certificates, and other aspects of the delinquent tax certificate law.
- Modifies the computation of penalties charged for late payment of real property taxes or manufactured home taxes when the owner is paying past due taxes under an installment payment agreement.
- Prescribes additional procedures for the foreclosure of delinquent manufactured home taxes, and makes technical changes in the law governing manufactured home taxes.

- Formally distinguishes between past due tax installment payment contracts arising from a delinquency versus those arising from the property having been omitted from the tax records.

CONTENT AND OPERATION

County investment authority

(R.C. 135.35)

Newly permissible investments

Existing law restricts how funds to the credit of the county treasury may be invested while it is not needed to pay expenses or meet other obligations (so-called "inactive moneys"; it includes not only funds belonging to the county itself, but to other subdivisions in the county having money deposited in the county treasury). The range of permissible investments includes federal government and federal agency debt, Ohio state government debt, Ohio local government bonds, certificates of deposit, mutual funds consisting of federal or federal agency debt, some commercial paper of large corporations, and some short-term bankers acceptances.

The bill expands the permissible range of investments in which county inactive money may be made, as follows:

- Up to 25% of the county's total average portfolio may be invested in "mortgage pass-through securities" issued by a federal government agency, including the secondary marketers of mortgages such as the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, and the Federal National Mortgage Association. Investment is permitted in such securities only if they mature within five years after they are purchased by the county. But, investment is not permitted in collateralized mortgage obligations (i.e., bonds or other obligations secured by other obligations that, in turn, are secured by mortgages on property; thus, a collateralized mortgage obligation is only indirectly secured by a mortgage on property).

- Up to 15% of the county's total average portfolio may be invested in notes issued by corporations incorporated under United States law and operating in the United States, or in notes issued by banks or other depository institutions operating in the United States or doing business under United States law or a state's law. Investment is permitted in such notes only if the notes are rated "AA" or higher by a nationally recognized standard rating service (e.g., Standard and Poor's) and if they mature within two years after purchase.

- Up to 1% of the county's total average portfolio may be invested in debt interests issued by a foreign nation that is diplomatically recognized by the United States. Investment in such debt is permitted only if it is investment grade according to a nationally recognized rating agency; principal and interest are denominated and payable in United States funds; the debt is backed by the full faith and credit of the issuing nation; the issuing nation has no prior history of default; and the debt matures within five years after purchase.

- No load money market mutual funds consisting exclusively of the kinds of investment in which the Treasurer of State is authorized to place the state's funds on an interim basis (see R.C. 135.143).

Inflation-indexed bonds not a prohibited derivative investment

Current law prohibits county money from being invested in "derivatives." For the purpose of limitations on county investing authority, a derivative is defined as any financial instrument, contract, or obligation having a value or return based on or linked to another asset or index separate from the instrument, contract, or obligation itself--including instruments created from United States Treasury or other federal agency obligations.

The bill creates an exception for "treasury inflation protected securities," which would not be considered derivatives for the purposes of prohibited investments in derivatives. (Presumably, this includes U.S. Treasury-issued Class "I" bonds.)

Delinquent real property tax certificates

(R.C. Chapter 5721.)

Traditional real property tax foreclosure actions seek to derive past due taxes from property either by selling it or by forcing the owner to pay the taxes under threat of losing ownership. In either case, the collection of the revenue may be delayed for months or years. An alternative collection procedure employs the sale of delinquent tax certificates to private parties; in effect, such a certificate represents the right to collect the state's tax "receivables." The proceeds from selling the certificates are distributed among taxing districts as if they were tax collections, and the purchaser of the certificate is entitled to the taxes once they are derived from the property owner or, ultimately, from the foreclosure sale.

Certificates bear interest at a rate determined by public auction or negotiated (i.e., private) sale; in the case of an auction, the lowest rate bid wins.

<u>Contact with property owner prohibited</u>

(R.C. 5721.43)

The bill prohibits any person holding a tax certificate from contacting the property owner within one year after the certificate is purchased in order to encourage or demand payment of the sum due on the property. The prohibition applies whether the certificate holder makes the contact directly, or indirectly through an agent. If a certificate holder violates the prohibition, the county treasurer may bar the holder from bidding on tax certificates, and the violator is subject to a civil penalty of up to $5,000 per offense. Also, an injunction action may be brought against a certificate holder who violates, or threatens to violate, the prohibition.

<u>Tax certificate redemption price</u>

(R.C. 5721.30 and 5721.33)

The redemption price of a tax certificate is the amount of money that must be paid to nullify, in effect, the delinquent charge against the property and to extinguish the underlying tax lien. Generally, the redemption price equals the sum of all the delinquent taxes and charges, interest that has accrued on the certificate since it was purchased (at the rate bid by the purchaser), and fees charged by the county treasurer to defray the county's expense of preparing and selling certificates. If a certificate is redeemed within one year after it is sold, the certificate holder is entitled to a minimum "interest" or carrying charge equal to 6% of the certificate purchase price, in lieu of the interest accruing at the rate bid by the purchaser (unless the rate exceeds 6%). If it is sold after one year, the 6% minimum charge applies in the first year after the sale (unless the bid interest for the first year is greater), and the bid interest rate applies thereafter.

The bill guarantees a minimum carrying charge of 6% of the certificate purchase price regardless of when the certificate is redeemed. If the interest that accrues until redemption exceeds 6% of the purchase price, then the redemption price includes the interest rather than the 6% charge. The bill also specifies that the period during which interest accrues begins on the first day of the month after the month in which the certificate was purchased, rather than the day it was purchased. And the bill expressly states that county treasurers selling certificates at private sale shall sell the certificates bearing a rate of interest that is "in the best interests of the county."

Notice to interested parties

(R.C. 5721.31)

Before delinquent tax certificates may be sold, the county treasurer must send written notices of the sale to the property owner and other interested parties (e.g., mortgagors). If the sale is to be by public auction, the notice is to be sent to the listed owner or other interested parties who are discovered through a title search. If the sale is to be by private (negotiated) sale, the notice is to be sent to the listed owner and interested parties whose interest is recorded with the county recorder; the notice of a private sale is to be sent at least 60 days before the sale.

The bill removes the notice requirement if previous notices sent to the owner were returned as undeliverable. Also, the absence of a valid tax mailing address does not preclude the sale of tax certificates. And, in the case of private certificate sales, no notice need be sent to any interested party other than the owner, and notices need be sent at least 30 (not 60) days before the sale.

Bidder requirements

(R.C. 5721.32)

The bill permits county treasurers to require potential bidders to submit a letter from a financial institution stating that the bidder has sufficient funds to pay the purchase price of the property to be bid on, and a written authorization from the bidder for the treasurer to verify the statement. Any person required to submit such a statement and authorization who fails to do so is barred from bidding.

Private foreclosure actions

(R.C. 5721.37)

Under existing law, a tax certificate holder may recover the investment in the certificate at any time between one year and three years after the certificate was purchased. If the certificate is purchased at public auction, the foreclosure must be initiated through the county treasurer's office at the request of the certificate holder. If the certificate is purchased through a private sale, the foreclosure may be initiated either through the county treasurer's office or by the certificate holder's private attorney.

The bill permits holders of certificates purchased at public auction to pursue foreclosure either through the county treasurer's office or a private attorney, as is currently permitted when the certificate was purchased at private sale.

Prosecutor's fees

(R.C. 5721.38(B)(3))

Under existing law, a property owner may redeem the property, and thereby prevent tax certificate foreclosure action, by paying the delinquent taxes, penalties, and interest, plus the interest that has accrued on the certificate and any premium paid for the certificate by its purchaser (the "certificate redemption price"). If the certificate holder has requested that the county begin foreclosure actions but the property has not yet been sold, the owner also must pay a sum to cover the county prosecuting attorney's expenses (these expenses are prepaid by the certificate holder as a condition for having the foreclosure action begin).

The bill provides for the possibility that an owner might redeem the property after the certificate holder requests foreclosure but before the prosecutor files the action with the court. In such a case, the prosecutor's fee is adjusted to reflect the services the prosecutor has provided until the time the property is redeemed; if the certificate holder pre-paid more than the adjusted fee, the overpayment is refunded to the certificate holder.

Rules for private certificate sales

(R.C. 5721.33(E))

Currently, county treasurers are authorized, but not required, to adopt rules governing private certificate sales. The bill requires them to adopt such rules and to provide copies of the rules upon request.

Other tax certificate changes

The bill makes several changes intended to clarify the law governing delinquent tax certificates without substantively changing the law, including the following:

- Simplifying language describing the amount to be refunded when a certificate is voided because the taxes have been paid or are in the process of being paid. (R.C. 5721.34.)
- Simplifying the language describing the amount that a property owner must pay to redeem the land before it is sold to pay the certificate holder, by reflecting recent legislation that provides for new tax certificates to be issued as additional delinquent taxes accrue. (R.C. 5721.38(A), reflecting R.C. 5721.42.)

Omitted property tax contracts

(R.C. 5713.20)

Whenever real property has escaped from taxation by being omitted from the tax lists, existing law requires it to be added to the lists and requires up to five years' worth of unpaid taxes to be charged against the property. In order to pay the past due taxes, the property owner may agree to a "delinquent tax contract," whereby the past due taxes are paid in installments.

The bill changes the name of such an installment contract--to an "omitted tax contract"-- to distinguish it from a contract to pay delinquent taxes on property that was included on the tax lists.

Late penalties for tax installment contracts

(R.C. 323.121, 323.31, 4503.06(G))

Under existing law, real property taxes are charged annually, and are due in arrears--one-half of the bill is due on the last day of the year, and the second half is due June 20 of the following year (delays in the preparation of tax bills routinely extend the first-half due date into January). If taxes are not paid when due, a 10% penalty attaches (50% of the penalty is waived if the taxes are paid within a ten-day grace period). The penalty applies to both current taxes and past due taxes that have not yet been paid (unless the property owner is paying the past due amount under an installment tax contract). Taxes on manufactured homes that are not taxed as real property also are payable in two semiannual installments, by March 1 and by July 31, but the taxes are paid currently rather than in arrears. A similar penalty applies to past due manufactured home taxes as to real property taxes.

The bill suspends imposition of the penalty for past due real property and manufactured home taxes after the second half collection period begins (i.e., about June 20) if the first half taxes are being paid under an installment tax contract. The suspension ends if the contract becomes void.

The bill also defines what constitutes "unpaid current taxes" that may be paid under a delinquent tax contract: they are taxes (and any penalty) due, but not paid, on the first-half due date (as distinguished from "delinquent" taxes, which are taxes remaining unpaid on the second-half due date).

Tax foreclosures on manufactured homes

(R.C. 4503.06(H))

Manufactured homes may be taxed as real property or as separate articles of personal property, depending on whether they are permanently fixed to the land and certain other factors. In either case, if taxes are not paid for an extended period, collection procedures ultimately may force foreclosure of the tax lien by sale of the property and the forfeiture of the owner's interest in the home.

The bill specifies the point in time at which the final result of a foreclosure action occurs in the case of manufactured homes that are not taxed as real property. Once the home is sold at foreclosure, title to the home vests in the purchaser when the confirmation of sale is filed or when the order of forfeiture is filed. The bill also specifies that clerks of courts (who maintain ownership records of manufactured homes) must issue certificates of titles to the purchaser if the purchaser provides proof of the confirmation or order (or, if the title was forfeited by the previous owner, by providing the certificate of sale issued by the county auditor).

Other manufactured home-related tax provisions

Reimbursement for property tax reductions on manufactured homes

(R.C. 321.24(I))

Currently, all real property, including manufactured homes that are treated as real property for the purposes of property taxation, are entitled to a reduction of 10% of the tax bill. To compensate school districts and other taxing districts for the resulting reduction in property tax revenue, the state pays General Revenue Fund money to each district. The payments are made twice per year shortly after the tax books are settled between the county auditor and the county treasurer.

The bill corrects recent legislation (S.B. 142 and H.B. 672 of the 123rd General Assembly) that did not adequately provide for such payments in the case of manufactured homes treated like real property for tax purposes.

Clerical errors in tax lists

(R.C. 4503.06(M))

Existing law provides for the correction of "clerical" errors in property tax records that result in erroneous tax charges. (Generally, a clerical error is an error that does not result from an exercise of discretion--for example, a mathematical error or incorrect listing.)

The bill conforms provisions governing the correction of clerical errors in manufactured home tax records with existing law governing the correction of errors in property tax records. Specifically, the correction of such errors must be initiated by the county auditor (who possesses the definitive tax lists), and the board of revision must determine whether an erroneous charge has truly resulted. If so, the board must order the correction and any adjustment in the amount due, including any refund, in the same manner as for errors regarding real property taxes.

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	06-19-02	p. 1971

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