



**Am. Sub. H.B. 168**

125th General Assembly  
(As Passed by the General Assembly)

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**Sens. Harris, Stivers, Carey, Armbruster, Brady, Robert Gardner, Schuler, Spada, Zurz**

**Effective date: \***

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**ACT SUMMARY**

- Expands the range of permissible investments for inactive funds of a county treasury to generally include investment in certain U.S. treasury securities and "strips" of securities or obligations of the U.S. government, commercial paper notes with longer maturities, notes of U.S. corporations or domestic depository institutions, debt interests of foreign nations diplomatically recognized by the U.S., and mutual funds consisting of specified investments in which the Treasurer of State is authorized to place state interim funds.
- Modifies initial and continuing education requirements of county treasurers, including providing for a biennial schedule for completion, carryover hours, and enforcement provisions, as well as the transfer of investing and portfolio management authority to a county's investment advisory committee if the county treasurer fails to comply with initial or continuing education requirements.

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*\* The Legislative Service Commission had not received formal notification of the effective date at the time this analysis was prepared. Additionally, the analysis may not reflect action taken by the Governor.*

- Expands the range of permissible investments for state interim funds to include bonds and other direct obligations of the state issued by the Ohio Building Authority and the Ohio Housing Financing Agency.
- Authorizes the board of county commissioners--serving a county with a population of at least 200,000--to employ tax collectors to collect delinquent real property taxes under certain circumstances.
- 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 to pursue a private foreclosure 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.
- Extends a delinquent tax certificate holder's deadline for filing a foreclosure request on property while the property owner's bankruptcy petition remains open.
- Modifies the amount and calculation of interest and other amounts payable after a foreclosure sale to a delinquent tax certificate holder that requested the foreclosure.
- Modifies the amount that must be paid to extinguish delinquent tax certificates and redeem the delinquent property, the requirements for bidding on tax certificates and 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 other changes in the law governing manufactured home taxes.

- Formally distinguishes between past due tax installment payment contracts arising from a delinquency and those arising from the property having been omitted from the tax records.
- Authorizes a county treasurer, upon documenting that the state reimbursement payment for the \$10,000 tangible personal property exemption in fiscal year 2003 was incorrect, to file an amended certification for the purposes of the ten-year phase-out of the reimbursement.
- Clarifies the effective date for the operation of a use tax provision.

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## CONTENT AND OPERATION

### INVESTMENT AND INVESTING EDUCATION REQUIREMENTS

#### County investment authority

(R.C. 135.35)

#### Permissible investments

Continuing law restricts how funds in a county treasury may be invested while such funds are not needed to pay expenses or meet other obligations (so-called "inactive moneys"; the term 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 generally includes U.S. government and federal agency debt, Ohio state government debt and Ohio local government bonds, certificates of deposit, mutual funds consisting of federal or federal agency debt, the Ohio Subdivisions Fund (STAR Ohio), securities lending agreements with described financial institutions or certain dealers of U.S. government securities, some commercial paper of large corporations, and some short-term bankers acceptances.

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

- Book entry, zero-coupon United States treasury securities that are direct obligations of the United States. The act also eliminates a prohibition on investment in stripped principal or interest obligations of any security or interest obligation issued or guaranteed by the United States government, including the proposed obligations.
- Commercial paper notes that, in addition to other requirements, mature in not more than 270 days (rather than 180 days, as in prior law). Under continuing law not changed by the act, these commercial paper notes must be rated in the highest classification by two nationally recognized standard rating services and the aggregate value of the notes purchased must not exceed 10% of the outstanding notes of the issuing corporation.



- Up to 15% of the county's total average portfolio may be invested in notes issued by corporations incorporated under federal law and operating in the United States, or in notes issued by depository institutions operating in the United States and doing business under federal law or a state's law. Investment is permitted in these notes only if the notes are rated "AA" or higher by two nationally recognized standard rating services (e.g., Standard and Poor's) at the time of purchase 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 rated at the time of purchase in the three highest categories according to two nationally recognized standard rating services; 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. The act further specifies that a debt interest is rated in the three highest categories if either the debt interest itself or the issuer of the debt interest is rated, or is implicitly rated, at the time of purchase in the three highest categories by two nationally recognized standard rating services.
- No load money market mutual funds that are rated in the highest category by at least one nationally recognized standard rating service and that consist exclusively of obligations that (1) are issued or guaranteed by the U.S. government or issued by a federal government agency or instrumentality or (2) are commercial paper issued by U.S. corporations and rated in the two highest categories by two of the nationally recognized rating services. (These also are kinds of investments in which the Treasurer of State is authorized to place the state's funds on an interim basis (see R.C. 135.143(A)(1), (2), and (6)).

### **Inflation-indexed bonds not a prohibited derivative investment**

Continuing law prohibits county money from being invested in "derivatives." For purposes of this prohibition, 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 act creates an exception for "treasury inflation-protected securities," stating that such securities are not to be considered derivatives if they mature within five years.

The act also replaces references to "investment authority" with "investing authority," which term generally is defined by continuing law to be a county treasurer.

### **Education requirements for county treasurers**

#### **Schedule for completion; carryover hours**

(R.C. 135.22, 321.46, and 321.47)

Before taking office, newly elected county treasurers are required to take at least 13 hours in education programs about investments and cash management, the manner and content of which are determined by the Treasurer of State. The newly elected county treasurers are also required to take 13 hours in education programs about governmental accounting and portfolio reporting and compliance, the manner and content of which are determined by the Auditor of State. Prior law required a county treasurer, after one year in office, to take not less than 12 hours of continuing education annually in education programs about these and additional specified topics, the manner and content of which similarly were determined by the Treasurer of State and the Auditor of State.

The act requires that 24 hours of continuing education be completed *biennially* after a county treasurer's first year in office. However, the act suggests that a county treasurer who fails to comply with the continuing education requirements by the end of a biennial cycle may comply with the continuing education requirements if the county treasurer (1) attends courses required to be provided and approved by the State Auditor or State Treasurer and (2) complies fully with the continuing education requirements by April 30 of the year following a biennial cycle. In addition, a county treasurer who accumulates more than 24 hours of continuing education in a biennial cycle may carry forward these excess hours to the next biennial cycle. However, no more than six hours in specified continuing education topics determined by the Treasurer of State, and six hours in specified continuing education topics determined by the Auditor of State, may be carried forward.

The act also clarifies that education requirements of county treasurers are separate from the education requirements applicable to treasurers, or those persons responsible for managing funds, of other political subdivisions.

**Enforcement of education requirements; investment advisory committee duties**

(R.C. 135.341, 321.46, and 321.47)

Under prior law, a county treasurer who failed to comply with initial or continuing education requirements "without a valid health-related excuse or other special hardship" was limited to investing in (1) the Ohio Subdivisions Fund (STAR Ohio), (2) certain no-load money market mutual funds, or (3) certain certificates of deposit or deposit accounts. If a county treasurer who had not completed the initial or continuing education programs made investments other than in those above, the treasurer was subject to removal from office upon complaint and investigation by a county's prosecuting attorney and the adoption of a resolution of removal by the county's board of commissioners.

The act eliminates a "valid health-related excuse or other special hardship" as excuses for failing to comply with the initial or continuing education requirements and eliminates the possibility of removal from office of a county treasurer failing to meet these requirements. Instead, in enforcing the *initial* education requirement, the act specifies that a county treasurer's authority to invest county funds and to manage the county's portfolio will be *immediately* suspended for non-compliance and transferred to a county's investment advisory committee until full compliance is determined by the Treasurer of State.<sup>1</sup> In enforcing the *continuing* education requirements of county treasurers, the act generally provides procedures that must be followed, which ultimately may require suspending a treasurer's investing and portfolio management authority and transferring this authority to a county's investment advisory committee.

Under the act, however, a county treasurer who does not comply with initial or continuing education requirements nonetheless may invest in investments described in (1) to (3) above *but* will face the enforcement provisions if there is investment in any other obligations (*i.e.*, immediate suspension of investing and portfolio management duties and transfer of these duties to a county's investment advisory committee for failure to comply with the initial education requirement; other enforcement procedures that ultimately may lead to the suspension and transfer of these duties to a county's investment advisory committee for failure to comply with continuing education requirements).

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<sup>1</sup> *The county investment advisory committee consists of two county commissioners designated by the board of county commissioners, and the county treasurer. Alternatively, the board of county commissioners can provide that the county investment advisory committee consists of all three county commissioners, the county treasurer, and the clerk of the court of common pleas.*

**Auditor of State and Treasurer of State enforcement duties.** Under the act, by January 15 of the year following the year of completion of a biennial cycle, the Auditor of State must contact the Treasurer of State about the number of continuing education hours completed under the Auditor's supervision by each county treasurer in the preceding biennial cycle (a cycle runs every two calendar years after a county treasurer's first year in office). And by January 31 of the year following the year of completion of a biennial cycle, the Treasurer of State must determine whether any county treasurer has failed to comply with any continuing education requirements. The Treasurer of State also has duties under the act as discussed below, if there are court enforcement proceedings relating to county treasurer continuing education requirements.

In addition, by January 31 of the year following the year of completion of a biennial cycle, the Treasurer of State must notify by certified mail any county treasurer who has not complied with continuing education requirements during the preceding biennial cycle. The act specifies that this notice must contain notification that (1) the county treasurer is deficient in continuing education hours, (2) the county treasurer has one month to submit proof of an error in the Treasurer of State's records and that the county treasurer is in compliance with the continuing education requirements, (3) completion of continuing education requirements also may be obtained by attending courses approved by the Auditor of State or the Treasurer of State, but that continuing education requirements must be complied with fully and the Treasurer of State must have proof of full compliance by April 30 of the year following the year of completion of a biennial cycle, and (4) if the county treasurer fails to comply with the continuing education requirements by April 30 of the year following the year of completion of a biennial cycle, the Treasurer of State immediately will notify the prosecuting attorney in that county.

**Court enforcement proceedings.** Upon receipt of notice from the Treasurer of State pursuant to (4) above, the prosecuting attorney for the county which the county treasurer represents must file a petition stating the facts and that the county treasurer has failed to meet the continuing education requirements. The petition must be filed with a common pleas court and seek an order suspending the county treasurer's investing and portfolio management authority. A copy of the petition and a copy of the act's provisions relating to enforcement of the continuing education requirements must be served, by certified mail or personally, by the prosecuting attorney upon the county treasurer before or simultaneously with this filing made in a common pleas court.

Upon the filing of a petition with a court of common pleas, the court, on motion of the prosecuting attorney, must enter an order setting a hearing date not later than two weeks after the petition is filed. In addition, the court must require

that a copy of this order be given to the county treasurer in the manner in which a summons must be served or substituted service must be made in other cases.

The act requires that, at this hearing, the court must consider the petition and evidence and determine whether the county treasurer has met the continuing education requirements. If the court determines that the county treasurer has not met the continuing education requirements, the court must enter an order transferring the authority to invest county funds and to manage the county's portfolio to the county's investment advisory committee, until there is full compliance. The act modifies the duties of county investment advisory committees in recognition of this possible transfer of authority and also requires the committees to retain an investment advisor if this transfer occurs. The cost of the hearing is to be assessed or apportioned as the court determines reasonable.

Upon receiving proof of completion of the continuing education requirements for the preceding biennial cycle, the Treasurer of State must notify the prosecuting attorney of the full compliance, and the prosecuting attorney must submit this information to the common pleas court. Thereafter, the court must enter an order terminating the county investment advisory committee's authority to invest county funds and to manage the county's portfolio and restoring this authority to the county treasurer.

The act specifies that court enforcement of the continuing education requirements are "special proceedings," the final orders of which may be reviewed, and affirmed, modified, or reversed pursuant to Ohio Appellate Procedure Rules and, to the extent not in conflict with those rules, pursuant to Ohio law on Procedures on Appeal.

### **Treasurer of State investment authority**

(R.C. 135.143, 152.17, and 175.09)

Under the state's Uniform Depository Act (Chapter 135.), the Treasurer of State is authorized to invest or deposit the state's interim funds in certain obligations. Generally, the state's interim funds are the public moneys in the state treasury that are not needed for immediate use but that will be needed at such a time that they do not qualify as inactive deposits.

The Treasurer is authorized to invest or deposit the state's interim funds only in those obligations specified in section 135.143 of the Revised Code. Eligible obligations include obligations or securities issued by the United States treasury or any federal government agency, bonds or other direct obligations of the state issued by the Treasurer or the Ohio Public Facilities Commission, as well as other classifications of obligations.



The act establishes eligibility for another class of obligations in which the Treasurer may invest the state's interim funds. Specifically, the state's interim funds may be invested in bonds and other direct obligations of the state issued by the Ohio Building Authority as well as those issued by the Ohio Housing Financing Agency.

**Bond service charges**

(R.C. 154.01 and 154.08)

Continuing law authorizes the Treasurer of State to issue state obligations to finance capital facilities for mental hygiene and retardation, state-supported and state-assisted institutions of higher education, and parks and recreation (R.C. Chapter 154.). These bond proceedings may, among other things, provide for credit enhancement facilities,<sup>2</sup> the cost of which is permitted to be included in the costs of issuance of the obligations and the pledge, holding, and disposition of the proceeds of the obligations.

For purposes of this law, "bond service charges" on the obligations is defined as principal, including mandatory sinking fund requirements for retirement of obligations, and interest, and redemption premium, if any, required to be paid by the state on obligations. The act specifies that, if not prohibited by the applicable bond proceedings, bond service charges may include costs relating to credit enhancement facilities that are related to and represent, or are intended to provide a source of payment of or limitation on, other bond service charges.

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<sup>2</sup> "Credit enhancement facilities" means letters of credit, lines of credit, stand-by, contingent, or firm securities purchase agreements, insurance, or surety arrangements, guarantees, and other arrangements that provide for direct or contingent payment of debt charges, for security or additional security in the event of nonpayment or default in respect of securities, or for making payment of debt charges to and at the option and on demand of securities holders or at the option of the issuer or upon certain conditions occurring under put or similar arrangements, or for otherwise supporting the credit or liquidity of the securities, and includes credit, reimbursement, marketing, remarketing, indexing, carrying, interest rate hedge, and subrogation agreements, and other agreements and arrangements for payment and reimbursement of the person providing the credit enhancement facility and the security for that payment and reimbursement (R.C. 133.01, not in the act).

## TAX MODIFICATIONS

### *Tax collectors of delinquent property taxes*

(R.C. 5719.051 and 5721.021)

Under continuing law largely retained by the act, a county's board of commissioners and its treasurer may employ and fix the *salary* of tax collectors of delinquent personal property taxes. The act modifies this authority to permit a county's board of commissioners and its treasurer to employ and fix the *compensation* of the tax collectors.

Additionally, the act authorizes the employment of tax collectors of delinquent *real* property taxes in certain counties. Specifically, the board of county commissioners--serving a county with a population of at least 200,000--may, with the consent of the prosecuting attorney, authorize the county treasurer to employ tax collectors to collect delinquent property taxes on delinquent lands and fix the compensation of the collectors. The compensation is to be paid from the funds that share in the distribution of the taxes.

### *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 generally 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 a 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.

### *Contact with property owner prohibited*

(R.C. 5721.43)

The act prohibits any person holding a tax certificate from contacting the property owner within one year after the certificate is purchased 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 (to be paid into the state General Revenue Fund). Upon the written request of the county treasurer, the Attorney General or county prosecuting attorney must commence this civil action. Also, an injunction action may be brought against a certificate holder who violates, or threatens to violate, the prohibition.

**Tax certificate redemption price**

(R.C. 5721.30, 5721.33, and 5721.41)

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 of a certificate other than a zero interest rate certificate 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 at auction), 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 rate for the first year is greater), and the bid interest rate applies thereafter.

The act guarantees a minimum carrying charge of 6% of the certificate purchase price regardless of when the certificate is redeemed, provided the certificate is not a zero interest rate certificate. 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 act provides that even if the tax certificate is redeemed before the first day that interest accrues, 6% of the certificate purchase price still is due upon redemption of a certificate. And the act expressly requires county treasurers selling certificates at private sale to 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)

Under continuing law largely retained by the act, before delinquent tax certificates may be sold, the county treasurer must send written notices of the sale to either the property owner or 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.



Under prior law, if the sale was to be by private (negotiated) sale, the notice was to be sent to the listed owner or interested parties whose interest was recorded with the county recorder, or to both the owner and such interested parties. The notice of a private sale was to be sent at least 60 days before the sale.

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

**Bidder requirements**

(R.C. 5721.32)

The act 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, along with 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; effect of bankruptcy filing**

(R.C. 5721.37 and 5721.40)

Under continuing law, a tax certificate holder may recover the investment in the certificate by foreclosing on the property at any time between one year and three years after the certificate was purchased for a certificate sold at public auction or six years for a certificate sold through private sale. Formerly, if the certificate was purchased at public auction, the foreclosure had to 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 is initiated by the certificate holder's private attorney.) Formerly however, regardless of how a certificate was sold, if the owner of the property filed for bankruptcy, the last day foreclosure could be requested by a certificate holder was the later of three years after the certificate was sold or 180 days after the bankruptcy case closed.

The act permits holders of certificates purchased at public auction to pursue foreclosure either through the county treasurer's office or a private attorney. The act also specifies that when a property twice has been offered for sale pursuant to a private foreclosure action but has not sold, the property is forfeited to the certificate holder--as is the case under continuing law when a certificate holder twice pursues foreclosure through the county treasurer's office. With respect to a

bankruptcy filing by the property owner, the act continues the requirement that the certificate holder of a certificate sold at public auction has until the later of three years after the date the certificate was sold or 180 days after the bankruptcy case is closed to file a request for foreclosure. The act provides that the certificate holder of a certificate sold through a private sale has until the later of six years after the date the certificate was sold or 180 days after the bankruptcy case is closed to file a request for foreclosure. However, the act also provides that the three- and six-year periods measured from the date the certificate was sold are tolled while the property owner's petition in bankruptcy is being heard and remains open.

**Proceeds to a certificate holder requesting foreclosure**

(R.C. 5721.39)

Continuing law specifies the components of a payment after a foreclosure sale that are made to a tax certificate holder that requested foreclosure on the property. Previously, the certificate holder was paid the sum of the following amounts:

--The certificate redemption prices of all the tax certificates sold against the parcel;

--Any premium paid by the certificate holder at the time of purchase;

--Interest on the certificate purchase prices of those certificates at the rate of 18% per year beginning on the day on which the certificate holder submitted payment to initiate the foreclosure proceedings and ending on the day of the sale, except that interest could not accrue for more than three years after the day the certificate was purchased if the holder did not submit that payment before the end of that three-year period;

--The amounts paid by the certificate holder to initiate the proceedings that represented any delinquent taxes or other charges against the property that were not covered by a tax certificate, and, for proceedings filed by the county prosecuting attorney, the fee to cover the prosecuting attorney's legal costs.

The act revises these components, so that the tax certificate holder that requested the foreclosure is paid the sum of the following amounts:

--The certificate redemption prices of all the certificates sold against the parcel to the certificate holder requesting the foreclosure;

--Any premium paid by the certificate holder at the time of purchase;

--Interest at the rate of 18% per year on the amount paid by the certificate holder to initiate the proceedings that represents the certificate redemption prices of all outstanding tax certificates on the parcel other than those owned by the holder, beginning on the day the amount was paid and ending on the day before the day the proceeds of the foreclosure sale are paid to the certificate holder;

--Interest at the rate of 18% per year on the amounts paid by the certificate holder to initiate the proceedings that represent any delinquent taxes or other charges against the property that are not covered by a tax certificate, and, for proceedings filed by the county prosecuting attorney, the fee to cover the prosecuting attorney's legal costs, beginning on the day the amount was paid and ending on the day before the day the proceeds of the foreclosure sale are paid to the certificate holder, and except that interest cannot accrue for more than six years after the day the certificate was purchased if the holder did not submit that payment before the end of that six-year period;

--The amounts paid by the certificate holder to initiate the proceedings that represent the certificate redemption prices of all outstanding tax certificates on the parcel other than those owned by that holder, any delinquent taxes or other charges against the property that are not covered by a tax certificate, and, for proceedings filed by the county prosecuting attorney, the fee to cover the prosecuting attorney's legal costs.

### **Prosecutor's fees**

(R.C. 5721.38)

Under continuing law, a property owner may redeem the property, and thereby prevent a 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 act 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)

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

### **Redeeming a certificate parcel**

(R.C. 5721.38)

Under continuing law, at any time before a tax certificate holder initiates foreclosure proceedings on a certificate parcel by submitting the required payments to the county treasurer, the owner of the parcel (or any other person entitled to redeem it) may redeem the parcel by paying to the treasurer the total of the certificate redemption prices of all certificates sold on the parcel. In addition, prior law required the owner to pay the sum of taxes and other charges against the parcel that have become due since the last certificate was sold. The act removes the requirement that the owner pay the sum of taxes and other charges against the parcel that have become due since the last certificate was sold to redeem the parcel.

### **Other tax certificate changes**

The act 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, including specifying that the portion of the refund representing fees paid the county treasurer and interest are paid from the county tax certificate administration fund rather than the undivided tax fund. (R.C. 5721.34.)
- Eliminating the specification that, in its order for the sale of a property for which a tax certificate holder has requested foreclosure, a court order the sale pursuant to existing law setting forth the requirements of a foreclosure sale by a private attorney upon a certificate holder's request to foreclose the holder's lien. (R.C. 5721.39.)

### **Omitted property tax contracts**

(R.C. 5713.20)

Whenever real property has escaped taxation by being omitted from the tax lists, continuing 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. 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 act 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, and 4503.06(G))

Under continuing law largely retained by the act, real property taxes are charged annually and are due in arrears--one-half of the tax 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). 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 that applies to real property taxes.

The act suspends imposition of the penalty for past due real property and manufactured home taxes after the second half collection period begins, if the first half taxes are being paid under a delinquent or omitted installment tax contract. The suspension ends if the contract becomes void.

The act also defines "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 act 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 act also specifies that the clerk of courts (who maintains ownership records of manufactured homes) must issue a certificate of title 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 and 319.302)

Under continuing law, all real property, including manufactured homes that are treated as real property for the purposes of property taxation, is 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 act corrects recent legislation (S.B. 142 and H.B. 672 of the 123rd General Assembly) that did not adequately provide for these payments in the case of manufactured homes treated like real property for tax purposes.

#### **Clerical errors in tax lists**

(R.C. 4503.06(M))

Continuing 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 act conforms provisions governing the correction of clerical errors in manufactured home tax records with continuing 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.

**State reimbursement for \$10,000 business property exemption**

(Section 3)

Continuing law exempts the first \$10,000 of a business's tangible personal property from property taxation (R.C. 5709.01(C)(3), not in the act). Prior to the enactment of Am. Sub. H.B. 95 of the 125th General Assembly, the state reimbursed local taxing districts for the resulting revenue reductions. However, Am. Sub. H.B. 95 phased out the reimbursement for the exemption over ten years. Under the phase-out, county treasurers receive a payment each year that is a reduced percentage of the county's fiscal year 2003 reimbursement. The payment is then apportioned among the county's taxing districts as if levied and collected as personal property taxes.

The act provides that if a county treasurer is able to document that the reimbursement amount certified and paid to the county in FY 2003 was incorrect, the treasurer may file an amended certification not later than June 30, 2004. Upon receipt of the amended certification, the Tax Commissioner may amend the certified amount accordingly for the purpose of making payments under the ten-year phase-out schedule.

**Use tax clarification**

(Section 4)

The act provides that the enactment of R.C. 5741.05, which pertains to the state and local use tax and determining for which jurisdiction the tax is to be collected, by Am. Sub. S.B. 143 of the 124th General Assembly takes effect January 1, 2005. The act states that the General Assembly intends by enacting this section to clarify that the operation of R.C. 5741.05 was to be coordinated with the revised effective dates to amended sales tax provision R.C. 5739.033 that were made by Sub. S.B. 47 and Sub. H.B. 127 of the 125th General Assembly.

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**HISTORY**

ACTION	DATE	JOURNAL ENTRY
Introduced	04-29-03	p. 444
Reported, H. Banking, Pensions, & Securities	09-23-03	p. 1084
Passed House (92-0)	10-08-03	pp. 1103-1104



Reported, S. Finance & Financial Institutions	01-29-04	pp.	1458-1459
Passed Senate (33-0)	02-04-04	pp.	1505-1507
House concurred in Senate amendments (86-5)	02-04-04	pp.	1630-1632

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