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Bill Analysis
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(As Reported by H. Banking, Pensions, and Securities)

Reps. Trakas, Calvert, Koziura, Carano, Aslanides, S. Patton, Miller, D. Stewart, Reidelbach, J. Stewart, G. Smith, Otterman, Seitz

BILL SUMMARY

- Expands the range of permissible investments for inactive funds of a county treasury to include investment generally in certain U.S. treasury securities and "strips" of securities or obligations of the U.S. government, commercial paper notes, notes of corporations or depository institutions, debt interests of foreign nations, and mutual funds in specified investments that are authorized for investment of state interim funds by the Treasurer of State.
- Modifies initial and continuing education requirements of county treasurers, including providing a biennial schedule for completion, carryover hours, and enforcement provisions, including 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.
- 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 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 the deadline for a tax certificate holder 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 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 other 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.

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CONTENT AND OPERATION

COUNTY INVESTMENT AND INVESTING EDUCATION REQUIREMENTS

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 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, 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:

- Book entry, zero-coupon United States treasury securities that are direct obligations of the United States. The bill 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 270 days (rather than 180 days in current law). Under continuing



law, the other requirements for investment in commercial paper notes is that they must be rated in the highest classification by two nationally recognized standard rating services, and the aggregate value of 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 United States law and operating in the United States, or in notes issued by depository institutions operating in the United States or doing business under United States 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 bill 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 consisting exclusively of the kinds of investments, that are rated in the highest category by at least one nationally recognized standard rating service and (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, 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

Current 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 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.)

The bill also makes several corrections to replace 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(B)(3), and 321.47(B)(4))

Initially, before taking office, continuing law requires that newly elected county treasurers take at least 13 hours in education programs about investments and cash management, the manner and content of which education programs are determined by the Treasurer of State, and 13 hours in education programs about governmental accounting and portfolio reporting and compliance, the manner and content of which education programs are determined by the Auditor of State. After completing one year in office, under current law, a county treasurer must 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 education programs similarly are determined by the Treasurer of State and the Auditor of State.

Continuing law specifies that the initial education requirements must be complied with before a newly elected treasurer takes office. Current law does not specify a schedule during the year for completion of continuing education by county treasurers, only that it be completed annually. Existing law also does not specify that hours accumulated over 12 hours may be carried forward to a subsequent year.

The bill requires that 24 hours of continuing education be completed *biennially* every two calendar years after a county treasurer's first year in office. However, the bill 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 (1) the county treasurer 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, the manner and content of which is determined by the Treasurer of State, and six hours in specified continuing education topics, the manner and content of which is determined by the Auditor of State, may be carried forward.

The bill 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(E), and 321.47)

Under existing law, a county treasurer who fails to comply with initial or continuing education requirements "without a valid health-related excuse or other special hardship" is 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. And if a county treasurer who has not completed the initial or continuing education programs invests other than in (1) to (3), the treasurer is 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 bill 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 bill specifies that a county treasurer failing to comply with the initial education requirement will have the authority to invest county funds and to manage the county's portfolio *immediately* suspended and transferred to a county's investment advisory committee until full compliance is determined by the Treasurer of State. In enforcing the continuing education requirements of county treasurers, the bill 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.

Similar to current law, however, a county treasurer who does not comply with initial or continuing education requirements, under the bill, nonetheless may invest in investments described in (1) to (3) of the second previous paragraph *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).

Auditor of State and Treasurer of State enforcement duties. Under the bill, 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 bill that are 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 required continuing education during the preceding biennial cycle. The bill 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, under the bill, 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 bill'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, under the bill, 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 bill 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. And the bill 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. Under the bill, 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, under the bill, 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 bill 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.

PERSONAL AND REAL PROPERTY TAX MODIFICATIONS

Compensation of tax collectors of personal property taxes

(R.C. 5719.051)

Currently, a county's board of county commissioners and its county treasurer may employ and fix the *salary* of tax collectors of personal property taxes. The bill modifies this authority to permit a county's board of county



commissioners and its county treasurer to employ and fix the *compensation* of the tax collectors.

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 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.

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), 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.

Provided the certificate is not a zero interest rate certificate, 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 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 bill 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)

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 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 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; effect of bankruptcy filing

(R.C. 5721.37 and 5721.40)

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. However, regardless of how foreclosure is initiated, under current law, if the owner of the property for which the tax certificate was sold files for bankruptcy, the last day foreclosure may be requested by a certificate holder is the later of three years after the certificate was sold or 180 days after the bankruptcy case closes.

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. In addition, under the bill, regardless of whether foreclosure is initiated through the county treasurer's office or by private foreclosure action, if a bankruptcy petition is filed by the owner of the property that is the subject of the tax certificate, the three-year/180 day deadline for requesting foreclosure is extended while the owner's bankruptcy petition remains open. The bill 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, the same as in current law when a certificate holder twice pursues foreclosure through the county treasurer's office.

Proceeds to a certificate holder requesting foreclosure

(R.C. 5721.39)

Current 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. The bill specifies the computation of interest to be paid a certificate holder that requested the foreclosure and provides that interest may accrue for not more than six (rather than three, as in current law) years after a certificate is purchased on amounts paid by a holder representing other amounts due on the property that are not covered by a tax certificate and fees covering a prosecuting attorney's legal costs. In addition, the bill authorizes payment to the certificate holder requesting foreclosure of any amounts representing amounts paid by the holder to other certificate holders after the foreclosure.

Prosecutor's fees

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

Under existing 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 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.)

- Eliminates 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 upon a certificate holder's request to foreclose the holder's lien. (R.C. 5721.39 first paragraph.)

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, and 4503.06(G))

Under existing law, 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). 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 that applies 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 "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) and 319.302)

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 these payments in the case of manufactured homes treated like real property for tax purposes, including adding these tax reductions to the list of taxes under current law for which adjustments may be made to fund debt charges of a county.

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

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Introduced	04-29-03	p. 444
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