



H.B. 388

127th General Assembly
(As Introduced)

Reps. Driehaus, Foley

BILL SUMMARY

- Expands to all counties the authority--previously only granted to counties with a population exceeding 1.2 million--to access money in a county's Delinquent Tax and Assessment Collection Fund to be used for various purposes related to assisting borrowers facing home foreclosure and to assist municipal corporations in the nuisance abatement of deteriorated residential buildings in foreclosure.

CONTENT AND OPERATION

County use of DTAC funds

(R.C. 321.261)

Continuing law requires 5% of all delinquent real property, personal property, and manufactured and mobile home taxes and assessments to be deposited in a county's delinquent tax and assessment collection (DTAC) fund, to be used solely in connection with the collection of those taxes and assessments.

Amended Sub. H.B. 119 of the 127th General Assembly permitted the board of county commissioners of a county with a population exceeding 1.2 million to authorize up to \$3 million in the DTAC fund to be used to prevent residential mortgage foreclosures in the county and for nuisance abatement of foreclosed dwellings. The funds must be used to provide financial assistance in the form of loans to borrowers in default on their home mortgages, including to pay late fees, clear arrearage balances, and augment monies used in the county's "foreclosure prevention program." The funds also must be used to assist municipal corporations in the county in the nuisance abatement of deteriorated residential buildings in foreclosure, including paying the costs of boarding up buildings and lot maintenance and demolition costs. Funds cannot be accessed or used for these purposes after June 30, 2008.

The bill repeals the provision in H.B. 119 of the 127th General Assembly, and extends the same authority to any board of county commissioners regardless of a county's population. The bill does not include a sunset provision. Counties may therefore access funds for these purposes at anytime after the effective date of the bill. Note: Pursuant to R.C. 1.62 (not in the bill), Summit County, which has adopted a charter and does not have a board of county commissioners, would have the same authority granted to all other counties in the bill.

COMMENT

The bill's provision authorizing loans to individuals in default on their mortgage might raise an issue of constitutional law under Section 6, Article VIII, of the Ohio Constitution.

In general, Section 6 of Article VIII prohibits political subdivisions from purchasing shares of, or extending credit to, any joint stock company, corporation, or association. (The same prohibition applies to the state. Sec. 4, Art. VIII, Ohio Constitution.) The provision's primary purpose is to prohibit political subdivisions from investing in or establishing a debtor-creditor relationship with businesses, including sole proprietorships, created with a view to profit. *Walker v. City of Cincinnati* (1871), 21 Ohio St. 14, 54; *Markley v. Village of Mineral City* (1898), 58 Ohio St. 430 (constitutional prohibition applies to individuals). The provision, however, might not be limited only to for-profit businesses; it refers to "any joint stock company, corporation or association," leaving open the possibility that Section 6 prohibits investments in and loans to a wider range of recipients than the historical circumstances leading to its adoption would suggest.

Ohio Supreme Court decisions appear to confirm that the identity of the recipient as well as the purpose of the loan are relevant. Twice the Ohio Supreme Court has held that Section 6 does not apply if the recipient is a nonprofit entity and the funds are to be used for a public purpose. See *State ex rel. Dickman v. Defenbacher* (1955), 164 Ohio St. 142 (grant to veterans' organizations to rehabilitate war veterans upheld); *State ex rel. Leaverton v. Kerns* (1922), 104 Ohio St. 550 (financial support provided to nonprofit agricultural society created to hold educational agricultural fairs upheld). Those cases suggest that, for purposes of the enclosed bill, a court might find relevant whether loans to individual homeowners to prevent foreclosures facilitates a public purpose. The Attorney General, however, concluded that low-interest loans to homeowners to rehabilitate their homes (using only federal funds) does facilitate that purpose. 1977 Ohio Atty. Gen. Ops. No. 77-049 (1977), at 2-176.

HISTORY

ACTION

DATE

Introduced

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