Fiscal Note & Local Impact Statement

123 rd General Assembly of Ohio

BILL: **H.B. 59** DATE: **February 24, 1999**

STATUS: **As Introduced** SPONSOR: **Rep. Womer Benjamin**

LOCAL IMPACT STATEMENT REQUIRED: **No — No local cost**

CONTENTS: **Revises the probate laws**

State Fiscal Highlights

STATE FUND	FY 1999	FY 2000	FUTURE YEARS
General Revenue Fund			
Revenues	- 0 *-	- 0* -	- 0* -
Expenditures	Potential minimal increase	Potential minimal increase	Potential minimal increase

Note: The state fiscal year is July 1 through June 30. For example, FY 2000 is July 1, 1999 – June 30, 2000.

- A potential minimal increase in GRF expenditures may be realized as administrative costs incurred by the Department of Taxation related to the role of the Tax Commissioner in the transfer of property upon a decedent's death escalate.

- * The elimination of the requirement of the Tax Commissioner's prior or subsequent written consent to the delivery, transfer or payment of certain property creates a compliance problem by removing an incentive for people to fully pay estate taxes. A decrease in estate taxes deposited into the GRF may be an unintended consequence of the elimination of this requirement.

Local Fiscal Highlights

LOCAL GOVERNMENT	FY 1999	FY 2000	FUTURE YEARS
Counties and Municipalities			
Revenues	- 0* -	- 0* -	- 0* -
Expenditures	Potential minimal decrease	Potential minimal decrease	Potential minimal decrease

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

- The bill would eliminate the role the county auditor performs in monitoring the transfer of property upon a decedent's death. However, the bill does not eliminate the fees that are collected by the county auditors and treasurers out of the funds to be deposited into the GRF.

- * The elimination of the requirement of the Tax Commissioner's prior or subsequent written consent to the delivery, transfer or payment of certain property creates a compliance problem by removing an incentive for people to fully pay estate taxes. A decrease in estate taxes deposited into local governments' general funds may be an unintended consequence of the elimination of this requirement.

Detailed Fiscal Analysis

The bill would make several changes to Ohio's Probate Laws, many of which will have no direct fiscal effect on either the state or local governments. Provisions in the bill regarding trusts, wills and the determination of present values in probate matters do not have direct fiscal effects upon any unit of government in Ohio. The main focus of the bill is to set probate law in conformity with Ohio's Estate Tax Law. However, certain changes regarding the transferring of property upon a decedent's death may potentially result in significant shifts in duties, expenditures and revenues for the Department of Taxation and the counties.

<u>Current Law</u>

Currently, Ohio Estate Tax Law generally prohibits the following entities from delivering, transferring, or paying the following types of tangible or intangible property (in whole or in part) after a decedent's death without the prior or, in some cases, subsequent written consent of the Tax Commissioner or the Tax Commissioner's agent, the county auditor:

(1) A corporation organized or existing under Ohio law cannot transfer on its books or issue a new certificate for any share of its capital stock registered in the name of a decedent, in trust for a decedent or in the name of a decedent and another person or persons.

(2) A safe deposit company, trust company, financial institution, or other corporation or person that has in its possession, control, or custody a deposit in a prescribed form cannot deliver or transfer an amount in excess of three-fourths of the total value of that deposit, including accrued interest and dividends, as of the date of the decedent's death. The Tax Commissioner's written consent need not be obtained prior to the delivery or transfer of amounts having a value of three-fourths or less of that total value.

(3) A life insurance company cannot pay the proceeds of an annuity or matured endowment contract, of a life insurance contract payable to the decedent's estate, or of any other insurance contract taxable under the Ohio Estate Tax Law.

(4) A trust company or other corporation or person cannot pay the proceeds of certain death benefit, retirement, pension, or profit-sharing plans in excess of $2,000.

(5) If the transfer of the property is taxable under the Ohio Estate Tax Law, a safe deposit company, trust company, financial institution, or other corporation or person that has in its possession, control, or custody securities, assets, or other property standing in a prescribed form cannot deliver or transfer any of that property that has a value as of the date of the decedent's death in excess of three-fourths of the total value of that property. The Tax Commissioner's written consent need not be obtained prior to the delivery or transfer of any of those types of property having a value of three-fourths or less of that total value.

Existing law also generally prohibits an entity or person listed in (5) above that has in its possession or control a safe deposit box or similar receptacle that stands in the name of a decedent or in the name of the decedent and another person or persons <u>or</u> to which the decedent had a "right of access" from delivering any of the receptacle's contents unless it is opened and inventoried in the presence of the Tax Commissioner or the Tax Commissioner's agent, the county auditor, and a written consent to transfer is issued. This prohibition does not apply when a receptacle stands in the name of a corporation or partnership or in the name of a decedent as guardian or executor and does not preclude the delivery of a will, deed to a burial lot, or insurance policy from a safe deposit box in a specified manner to a representative of a decedent.

<u>Bill Provisions</u>

The bill modifies the delivery, transfer, and payment prohibitions described in (1) to (5), above, by eliminating the requirement of the Tax Commissioner's prior or subsequent written consent to the delivery, transfer, or payment and by substituting a requirement that each covered entity or person give a prior or, in some cases, a subsequent written notice of the delivery, transfer, or payment to the Tax Commissioner. The bill continues the "general prohibition" against a covered entity or person delivering the contents of a covered safe deposit box or similar receptacle unless it is opened and inventoried in the presence of the Tax Commissioner or the Tax Commissioner's agent, but it also repeals the requirement that the Tax Commissioner or the Tax Commissioner's agent must issue a written consent to the transfer of the contents.

The bill requires the Tax Commissioner to issue a written acknowledgment of receipt of each written notice described above and of each opening and inventory of the contents of a safe deposit box or similar receptacle in the presence of the Tax Commissioner or the Tax Commissioner's agent, solely to evidence the receipt or presence. The bill prohibits the Tax Commissioner from conditioning the issuance of a written acknowledgment on any requirement stated outside of O.R.C. 5731.39. The increased burden of providing the written acknowledgment and the removal of the county auditor as an active participant in this process creates a potential minimal increase in GRF expenditures for the Department of Taxation.

The elimination of the responsibilities and duties of the county auditors in this process does not eliminate the fees that are collected by the county auditors and treasurers with regards to this process. These fees are collected out of the state's portion of estate tax revenue before it is transferred for deposit into the GRF. Currently, sixty-four percent of the estate taxes collected goes to the general fund of the local government where the decedent was located. The remaining thirty–six percent of the estate tax goes to the state's GRF. The county auditor is allowed, as compensation for the auditor's services, the following percentages: (1) Four per cent on the first one hundred thousand dollars; (2) One-half of one per cent on all additional sums. Such percentages shall be computed upon the amount collected and reported at each semi-annual settlement, and shall be for the use of the general fund of the county. The county treasurer is allowed as fees on all moneys collected on inheritance tax duplicates, the following percentages: (1) Three per cent on the first one hundred thousand dollars; (2) Two per cent on the next one hundred thousand dollars; (3) Five tenths per cent on all additional sums. Such percentages shall be computed upon the amount collected and reported at each semi-annual settlement, and shall be for the use of the general fund of the county.

Lastly, this provision of the bill will potentially have an impact upon compliance with the payment of estate taxes. The process requiring written consent from the Tax Commissioner or the county auditor before property is released produces documentation that can be easily cross-referenced to verify assets which should be listed on the filed estate tax form. It may be easier, under this bill, for individuals filing estate tax forms to intentionally or unintentionally leave off certain assets. The exclusion of these assets decreases the amount of estate taxes that are apparently due on the estate. The Department of Taxation is currently unable to estimate the potential loss in revenue to the state's GRF or to the counties' general fund. This would be a compliance problem and is not a direct fiscal effect of this bill. However, removing the requirement of the written consent removes an incentive that motivates people to fully pay estate taxes.

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