Ohio Legislative Service Commission

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Fiscal Note & Local Impact Statement

Bill: Am. Sub. S.B. 124 of the 128th G.A. **Date**: December 17, 2009

Status: As Enacted **Sponsor**: Sens. Faber and Schiavoni

Local Impact Statement Procedure Required: No — No local cost in the As Introduced version

Contents: Transfer on death designation, federal SAFE Act implementation, county DTAC Fund, county recorder fees, Burr Oak State Park coal mining leases

State Fiscal Highlights

STATE FUND	FY 2010	FY 2011	FUTURE YEARS
Consumer Finance Fund (Fund 5530) – Department of Commerce			
Revenues	Potential minimal annual loss		
Expenditures	Potential minimal annual increase		
Low- and Moderate-Income Housing Trust Fund (Fund 6460) – Department of Development			
Revenues	Potential, likely no more than minimal, annual loss in certain recording fees		
Expenditures	No discernible effect		
State Park Fund (Fund 5120) – Department of Natural Resources			
Revenues	Gain of approximately $210,000 in lease income		- 0 -
Expenditures	Potential one-time increase for deferred maintenance projects		- 0 -

Note: The state fiscal year is July 1 through June 30. For example, FY 2010 is July 1, 2009 – June 30, 2010.

SAFE Act implementation – Department of Commerce

- The SAFE Act provisions of the bill could lead to a small decline in licensing and registration fees and a small increase in costs for overseeing mortgage lenders, mortgage brokers, and their associated loan originators. These activities are supported by the Consumer Finance Fund (Fund 5530).

Low- and Moderate-Income Housing Trust Fund

- The bill amends current law to allow a county recorder to accept for filing certain nonconforming instruments or documents without charging the additional $10 Low- and Moderate-Income Housing Trust fee otherwise required to be collected for nonconforming instruments or documents. It appears that the potential or likely fiscal effect of this provision will be a no more than a minimal annual decrease in the amount of additional fees that would otherwise have been collected for the Low- and Moderate-Income Housing Trust Fund.

Coal mining leases at Burr Oak State Park

- The bill permits the Department of Natural Resources (DNR) to enter into an agreement by January 1, 2011 allowing for the extraction of coal beneath Burr Oak State Park. DNR expects one-time lease revenues of approximately $210,000, which will be deposited into the State Park Fund (Fund 5120) and used for deferred maintenance at park facilities.

Local Fiscal Highlights

LOCAL GOVERNMENT	FY 2010	FY 2011	FUTURE YEARS
Counties (probate division of courts of common pleas)			
Revenues	- 0 -		
Expenditures	Potential savings effect, annual magnitude uncertain		
County and Municipal Criminal Justice Systems (mortgage lending law violations)			
Revenues	Potential, likely no more than minimal, annual gain in court costs and fines		
Expenditures	Potential, likely no more than minimal, annual increase to prosecute mortgage lending law violations		
Hamilton County DTAC Fund			
Revenues	Potential loss in surplus balance		- 0 -
Expenditures	Potential decrease, commensurate with revenue loss		- 0 -
Hamilton County Prosecuting Attorney or Treasurer's Office			
Revenues	Potential gain from DTAC surplus balance		- 0 -
Expenditures	Potential increase, commensurate with revenue gain		- 0 -
County Recorders (nonconforming document filing fees)			
Revenues	Potential, likely no more than minimal, annual loss in certain document filing fees		
Expenditures	Potential decrease, commensurate with annual revenue loss		

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

Transfer on death

- If, as intended, the bill improves the efficiency of processing matters involving the transfer of interest in real property through a transfer on death instrument, then the probate division of courts of common pleas may realize some savings in their annual operating costs, the magnitude of which is problematic to quantify in terms of dollars and cents.

SAFE Act prohibition

- The bill prohibits a person from acting as a mortgage broker or loan originator unless registered with the National Mortgage Licensing System and Registry (NMLS&R), a violation of which is a first degree misdemeanor carrying a maximum jail sentence of six months and a maximum fine of $1,000. This may create some minimal expenses for county and municipal criminal justice systems to prosecute, adjudicate, and sanction offenders, and generate a minimal amount of local court cost and fine revenues.

Hamilton County DTAC Fund

- The bill in effect temporarily permits the Hamilton County prosecuting attorney or treasurer to use for office operating expenses up to half of Delinquent Tax and Assessment Collection Fund (DTAC) appropriations in excess of amount needed for collection of delinquent property taxes. This provision expires December 31, 2011.

County recorder fees

- The bill amends current law to allow a county recorder to accept for filing certain nonconforming instruments or documents without charging the additional $10 fee otherwise required to be collected for nonconforming instruments or documents. It appears that the potential or likely fiscal effect of this provision will be a no more than minimal annual decrease in the amount of additional fees that would otherwise have been collected for the county recorder's services.

Detailed Fiscal Analysis

Overview

For the purposes of this fiscal analysis, the bill contains the five provisions summarized immediately below.

(1) Transfer on death

The bill changes the process by which property may be transferred upon the death of an individual.

(2) Federal SAFE Act

The bill modifies mortgage lending laws as they relate to the SAFE Act enacted by Congress in July 2008.

(3) DTAC Fund

The bill temporarily allows the prosecutor or treasurer of Hamilton County to determine the amount of money appropriated to the respective office from the county Delinquent Tax and Assessment Collection (DTAC) Fund.

(4) Requirements for instruments or documents recorded with county recorder

The bill requires a county recorder to accept for recording an instrument or document that does not conform to the format requirements without charging the additional fees under existing law for incidental information not essential to the recording process or the legal validity of the instrument or document.

(5) Coal mining leases at Burr Oak State Park

The bill authorizes DNR to enter into lease agreements and real estate transactions not later than January 1, 2011 for the removal of coal from beneath Burr Oak State Park.

Transfer on death

The bill changes the transfer on death designation instrument from a deed to an affidavit, and allows an individual who owns real property or any interest in real property as a survivorship tenant to execute a transfer on death designation affidavit. Under existing law, any person who owns real property or any interest in real property may create an interest in the real property transferable on death by executing and recording a deed conveying that person's entire, separate interest in the real property to one or more individuals, and designating one or more other persons, identified in the deed by name, as transfer on death beneficiaries.

Based largely on discussions with staff of the Ohio State Bar Association, it appears likely that the primary effect of the bill will be to streamline the processing of matters handled by the probate division of the courts of common pleas that involve the transfer of interest in real property through a transfer on death instrument. The

potential resulting savings effect for any given probate division is rather problematic to quantify, but would involve some level of administrative savings in court time and expense related to greater efficiency in the processing of cases.

SAFE Act implementation

In July 2008, Congress passed the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (SAFE Act) as part of the Housing and Economic Recovery Act of 2008. The SAFE Act requires all loan originators to register with the newly created National Mortgage Licensing System and Registry (NMLS&R) and creates minimum standards for licensure of state-regulated loan originators. Implementing legislation for Ohio was included as part of H.B. 1 and becomes effective on January 1, 2010. Ohio will begin using the NMLS&R on January 4, 2010, on which date all applications for registration or licensure under the Ohio Mortgage Broker Act (OMBA) and Ohio Mortgage Loan Act (OMLA) must be submitted electronically through the new system.

The bill contains a number of changes to the OMBA and OMLA that largely make clarifications or corrections to the implementation language included in H.B. 1, many of which are included to conform to federal law. Some of these provisions, discussed below, may have a minimal fiscal effect. To ensure all of the above changes go into effect before January 1, the bill declares an emergency.

First, the bill prevents an OMBA or OMLA license or registration applicant from receiving a license or enables the Department of Commerce's Division of Financial Institutions to proceed with disciplinary action if an applicant or licensee has pleaded "no contest" to certain crimes. This is required by the federal SAFE Act. Currently, the Division takes disciplinary action only against those that have pleaded guilty to or have been convicted of such crimes. Because this would disqualify perhaps a handful of additional individuals from licensure or registration, the provision could reduce licensing revenue deposited into the Consumer Finance Fund (Fund 5530) by a small amount. The Division might also incur some new, but likely minimal, expenses for reviewing licenses and conducting additional disciplinary hearings.

Second, the bill prohibits a person from acting as a mortgage broker or loan originator unless registered with the NMLS&R, a violation of which is a first degree misdemeanor carrying a maximum jail sentence of six months and a maximum fine of $1,000. This may create some minimal expenses for county and municipal criminal justice systems to prosecute, adjudicate, and sanction offenders, and generate a minimal amount of local court cost and fine revenues. The state may collect a negligible amount of additional court cost revenue annually for deposit in the Indigent Defense Support Fund (Fund 5DY0) and the Victims of Crime/Reparations Fund (Fund 4020).

Hamilton County DTAC Fund

The bill allows a prosecuting attorney or treasurer of a county with a population greater than 800,000 but less than 900,000 to determine that the amount of money appropriated to that official's office from the county Delinquent Tax and Assessment

Collection (DTAC) Fund exceeds the amount required to be used by that office for collection of delinquent property taxes and assessments. Delinquent property taxes include real property, personal property, and manufactured and mobile home taxes and assessments including proceedings for foreclosure of the state's lien for such taxes. The prosecuting attorney or treasurer may spend up to half of this excess to pay the office's operating expenses otherwise payable from the county general fund. In the 2000 Census, as well as in the Census Bureau's latest estimates of county populations, for 2008, only Hamilton County fell within these population limits. This provision expires December 31, 2011.

County recorder fees

Current law stipulates that instruments or documents presented for recording by a county recorder be prepared in accordance with particular formatting standards. Recorders are required to accept for recording an instrument or document that does not conform to these formatting standards. To record a nonconforming instrument or document, a county recorder is required to charge additional fees as follows: an additional base fee of $10 for the recorder's services and a $10 fee for deposit in the state's Low- and Moderate-Income Housing Trust Fund. The bill amends current law to allow a county recorder to accept for filing certain nonconforming instruments or documents without charging the fees otherwise required to be collected for nonconforming instruments or documents.

State and local fiscal effects

It appears that the potential or likely fiscal effect of this provision will be a no more than minimal annual decrease in the amount of additional fees that would otherwise have been collected for the recorder's services and the Low- and Moderate-Income Housing Trust Fund.

Coal mining leases at Burr Oak State Park

The bill authorizes the Department of Natural Resources (DNR) to enter into lease agreements and real estate transactions not later than January 1, 2011 for the removal of coal from beneath Burr Oak State Park. Currently, the park lies between two tracts of land owned by the Buckingham Coal Company. The purpose of the lease would be to create an underground conveyance beneath the park to allow for the transportation of coal between the company's reserves on the east side of the park and the operating mine on the west side without traversing through the park or transporting the coal around the park. In addition, the transaction would involve a trade of mineral rights so that in exchange for granting Buckingham the authority to carve the underground conveyance, DNR would obtain the mineral rights on certain lands closer to the park's water resources in order to mitigate adverse environmental effects.

This provision would result in estimated one-time lease revenues of approximately $210,000, to be deposited into the State Park Fund (Fund 5120). DNR

would use this income for deferred maintenance on park facilities. This amount is based only on the approximately 27 acres of coal that would need to be extracted to construct the subterranean conveyance, and not on any permit fees or severance tax revenue that may result from mining this coal or the coal in Buckingham's reserves to the east of the park.

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