Ohio Legislative Service Commission

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Fiscal Note & Local Impact Statement

Bill: S.B. 43 of the 129th G.A. **Date**: June 15, 2011

Status: As Introduced **Sponsor**: Sen. Kearney

Local Impact Statement Procedure Required: No

Contents: Requires interest money for the purchase of real estate to be deposited in an interest bearing account to be used to fund foreclosure prevention programs

State Fiscal Highlights

- The bill distinguishes earnest money from other escrowed funds in that a real estate broker must deposit the former in a separate interest-bearing account, typically called an interest-bearing real estate trust account (IBRETA). Any interest and dividends earned on the money deposited is to be sent quarterly to the Department of Commerce to be deposited into the Foreclosure Prevention Fund, which the bill creates.
- The amount of money that would be generated annually for the Foreclosure Prevention Fund will depend on a number of factors, such as the strength or weakness of real estate markets, the interest rate earned on funds deposited, the amount of the earnest money deposited for each transaction, and the length of time the funds are held. Overall, the amount of annual revenue generated in the short term is expected to be minimal.

Local Fiscal Highlights

- No direct fiscal effect on political subdivisions.

Detailed Fiscal Analysis

Overview

Under current law, real estate brokers are required to maintain a noninterest-bearing special or trust bank account in order to deposit and maintain all escrow funds, security deposits, and other moneys received by the broker in a fiduciary capacity. This currently applies to earnest money, which is a relatively small amount of money placed with a broker as an indication that the prospective purchaser is acting in good faith. Earnest money may either be applied toward the purchase price or closing costs once the transaction closes or be returned to the buyer, depending on the terms of the purchase agreement. If the deal is not successful, current law permits the money to be distributed in accordance with the purchase agreement, written instructions both parties agree to, or pursuant to a court order. If the broker cannot locate the rightful recipient and the money remains unclaimed for two years, the broker is required to report the deposited earnest money as unclaimed funds and remit all of the earnest money to the Director of Commerce.

The bill distinguishes earnest money from other escrowed funds in that the real estate broker must deposit the former in a separate interest-bearing account, typically called an interest-bearing real estate trust account (IBRETA). Any interest and dividends earned on the money deposited is to be sent quarterly to the Department of Commerce to be deposited into the Foreclosure Prevention Fund, which the bill creates. The Foreclosure Prevention Fund would be used to fund state-approved foreclosure prevention programs. The Director of Commerce is given the authority to adopt rules to implement these provisions.

Fiscal effects

The amount of money that would be generated annually for the Foreclosure Prevention Fund will depend on a number of factors, such as the strength or weakness of real estate markets, the interest rate earned on funds deposited, the amount of the earnest money deposited for each transaction, and the length of time the funds are held. Since these factors may vary widely from market to market or from year to year, it is difficult to precisely estimate the revenues derived from the bill.

A number of surrounding states, such as Iowa, Minnesota, and Wisconsin, currently operate similar programs. Though Ohio is larger than these states, their experience may provide a rough idea of the amount of revenue generated by the bill. Before the most recent economic downturn, the interest earned on the deposits in each of those states ranged between $200,000 and $400,000 or so per year. Low interest rates and a weak real estate market have resulted in significantly lower revenue in recent years. For example, Wisconsin's IBRETA program generated about $85,000 in calendar year (CY) 2009. Revenue fell further to roughly $20,000 through the first nine months of CY 2010.

Overall, it appears that the annual revenue generated by the bill, at least in the short term, will be minimal. Should interest rates rise and real estate markets strengthen, revenue to the Foreclosure Prevention Fund from interest earnings would be expected to increase proportionately.

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