



Ohio Legislative Service Commission

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Fiscal Note & Local Impact Statement

Bill: [Sub. H.B. 72 of the 130th G.A.](#)

Date: October 30, 2013

Status: As Passed by the Senate

Sponsor: Reps. Brenner and Gerberry

Local Impact Statement Procedure Required: No

Contents: Modernizes the county recorders law and modifies recent amendments to tax-related law

State Fiscal Highlights

- **Impact on Ohio Housing Trust Fund.** The bill eliminates the authority for county recorders to charge fees for manually recording two types of instruments. However, these fees are typically not collected since almost all instruments are now recorded electronically. As a result, eliminating these manual recordation fees will likely have little impact on the portion of recordation fees deposited into the Ohio Housing Trust Fund (Fund 6460).
- **Homestead exemption change.** Allowing the homestead exemption for certain surviving spouses of persons who received this exemption in tax year 2013 (tax year 2014 for manufactured or mobile homes) will increase GRF expenditures, possibly by up to millions of dollars.
- **Real property tax rollback on inside millage.** Allowing the 10% and 2.5% rollbacks for inside millage not levied in tax year 2013 may increase GRF expenditures in future years.
- **Tax on qualifying pass-through entities.** Specification of the tax rate for qualifying pass-through entities will avoid a revenue loss estimated by the executive at \$30 million to \$35 million in the first year.
- **NOAA and PHS Commissioned Corps retirement pay deduction.** The bill starts a new tax deduction in tax year 2013 rather than 2014, for retirement pay for service in the Commissioned Corps of the National Oceanic and Atmospheric Administration (NOAA) and the Commissioned Corps of the Public Health Service (PHS), which may reduce GRF revenue in FY 2014 by an estimated \$235,000 (but see related comment in **Detailed Fiscal Analysis** below).
- **Commercial activity tax exclusion for grain handlers.** Accelerating the start of a commercial activity tax (CAT) exclusion for grain handlers by six months will decrease revenue in FY 2014 by an amount less than the annual cost of the exclusion, estimated at \$11 million.

Local Fiscal Highlights

- **Impact on county recorders.** The bill modernizes terminology in the Revised Code to accurately reflect how county recorders record and keep instruments today. Overall, these changes are unlikely to have more than a minimal impact on the fees collected by or the operating costs of county recorders.
- **Required fee for notices of possessory interest in land.** Under current law, county recorders are permitted but not required to collect fees for recording notices of possessory interest in land. The bill requires these fees to be collected. Because most county recorders already collect these fees, any gain in revenue for county recorders would likely be minimal at most.
- **Notification of hearings to consider the abolition of registered land.** The bill removes a requirement for boards of county commissioners, when considering abolishing registered land in the county, to provide owners of registered land hearing notices via certified mail. This may result in a minimal reduction in postage expenses.
- **Civil action to prevent the abolition of registered land.** The bill removes the process by which a registered land owner can bring action in a county court of common pleas to prevent the abolishment of registered land. This could result in a minimal reduction in administrative costs to courts of common pleas due to reduced case loads.
- **Property tax exemption for city-owned convention centers and arenas.** The bill would exempt from property taxes a convention center or arena in a county with a population of 500,000 to 600,000 if the convention center is owned by the city in which it is located. Direct fiscal effects would likely include loss of real property tax revenues to school districts and other units of local government.
- **Tax levies for zoological parks.** The bill lengthens the maximum term of a levy supporting a county zoo, from ten to any number of years or a continuing period of time.
- **Tax on qualifying pass-through entities.** Net increases in GRF taxes will result in increased transfers from the Local Government Fund (LGF, Fund 7069) and the Public Library Fund (PLF, Fund 7065) to counties, municipal corporations, and public libraries.

Detailed Fiscal Analysis

The bill modernizes terminology in the Revised Code to more accurately reflect how county recorders currently record and maintain documents and instruments filed in their offices using computers and other modern media. Additionally, the bill makes changes to certain recording fees, eliminates a specific penalty applicable to recorders who record a plat contrary to the laws of municipal corporations, and makes other general recording changes. These provisions are not likely to have more than a minimal overall fiscal effect on county recorders or on the Ohio Housing Trust Fund (Fund 6460), where a portion of recordation fees are deposited. The bill also modifies several recent amendments to tax-related law. Details about the bill's provisions along with any fiscal effects they might have are discussed in the sections below.

County recorders

County recorder's "official records"

The bill eliminates the current requirement that county recorders keep six separate sets of records including (1) a record of deeds, (2) a record of mortgages, (3) a record of powers of attorney and memoranda of trust, (4) a record of plats, (5) a record of leases, and (6) a record of declarations relating to the use of life-sustaining treatment and durable powers of attorney for health care. Instead the bill requires all of these instruments to be recorded and maintained in one general record series known as the "official records." This change generally reflects the current methods county recorders use to record and maintain documents and instruments filed in their offices. Typically, county recorders use computers and other modern storage media that consolidates this information within a single electronic database with the ability to track the required filings as if they were stored in separate sets of records. As this provision essentially codifies current practice, there is no expected fiscal effect as a result of this change.

Similarly, it is likely that changes made by the bill regarding indices of records made up by county recorders would not result in any fiscal effect. The bill eliminates (1) indices of notices of liens and notices of discharges, (2) the federal tax and other federal lien index, (3) the general index of deeds, (4) the index of powers of attorney, (5) the grantee deed index and grantor deed index, and (6) the notice index. Instead, the bill requires that information contained in these indices be included in the county recorder's direct and reverse index.

Recording fees

The bill eliminates the fees for two methods of recording instruments: (1) the \$4 base fee and \$4 Housing Trust Fund fee for manual or typewritten recording of an assignment or satisfaction of a mortgage or lease or any other marginal entry, and (2) the \$2 base fee and \$2 Housing Trust Fund fee for recording manually any plat not exceeding six lines, and the related base fee of 10¢ and a Housing Trust Fund fee of 10¢

for each additional line. The electronic means generally employed by county recorders today have rendered manual recordation of these instruments obsolete. As a result, any revenue lost as a result of eliminating these fees would likely be minimal at most.

In addition, the bill requires county recorders to charge fees for recording notices of possessory interest in land. Under current law, these fees are permissive rather than mandatory. Continuing law specifies that fees for recording notices of possessory interest in land are to be the same as for recording deeds. Generally, recorders already collect fees for this service. As a result, the additional revenue gained by county recorders, or any additional fees remitted to the Ohio Housing Trust Fund, would likely be minimal at most.

Elimination of fines

The bill also repeals a law that requires a county recorder who records a plat contrary to the plat laws of municipal corporations to forfeit and pay not less than \$100 nor more than \$500, to be recovered with costs in a civil action by the prosecuting attorney in the name and for the use of the county. It is not apparent that any such fine under this statute has ever been levied. Consequently, the fiscal effect of eliminating this provision, if any, would be negligible.

Abolition of land registration

The bill removes a requirement that a board of county commissioners provide notification via certified mail of a hearing concerning the abolishment of registered land to owners of registered land. Instead, only the continuing law requirement that the notice be published twice a week for two consecutive weeks in a newspaper of general circulation in the county would be necessary under the bill. The bill also removes the current law provision which allows an owner of registered land to bring action in the court of common pleas to prevent the county recorder from implementing a board's resolution abolishing registered land. As a result, the board of county commissioners and the county court of common pleas in counties where the boards adopt a resolution abolishing registered land may have a slight decrease in postage and administrative costs, respectively. However, any reduction in costs would likely be minimal at most. As of October 2013, there are 11 counties (Butler, Franklin, Geauga, Hamilton, Hancock, Medina, Montgomery, Morrow, Perry, Putnam, and Tuscarawas) with registered land.

Other changes affecting county recorders

The bill makes other changes to the law governing county recorders that do not appear to have any fiscal effect. These changes include: (1) eliminating recording of certain instruments as mortgages on real estate and as chattel mortgages, (2) requiring the county recorder to be included when the county auditor and engineer adopt written agreement standards governing conveyances of real property, and (3) allowing county recorders to dispose of paper versions of notices of recognizance liens and of their discharge if the county records commission revises the records retention and disposal

policy accordingly. For a more complete description of these various changes, please see the Legislative Service Commission's Bill Analysis for this bill.

Modifications of recent amendments to tax-related law

Exemption of city-owned convention centers and arenas from real and personal property taxes

The bill provides that a convention center or arena owned by the city where it is located, in a county with a population between 500,000 and 600,000 in the most recent decennial census, is exempt from real and personal property taxes. The population range limits the counties to Montgomery and Summit, based on the 2010 census. Other counties might qualify based on future decennial censuses. The bill states that the provision applies to TY 2013 and thereafter. However, the bill as passed by the Senate could go into effect no sooner than January 2014 even if enacted and signed promptly. Based on testimony, this provision appears intended to benefit West Carrollton, in Montgomery County. Whether other local governments would be affected is unknown.

The direct effect of the provision would likely be a loss of real property tax revenue to schools or other units of local government. Tangible personal property taxes were phased out by H.B. 66 of the 126th General Assembly, except for certain public utilities. Indirect effects of this provision of the bill might include increased real property taxes if the convention center or arena attracted increased economic development and led to higher property values than otherwise would have occurred. LSC does not have an estimate of the likely direct or potential indirect effects on real property tax revenue.

Tax levies for county zoological parks

The bill lengthens the maximum term of a property tax levy for the provision and maintenance of zoological park services and facilities operated or supported by a county, changing the limit from ten years to any specified number of years or for a continuing period of time. This change will eliminate the need for counties to seek renewed voter approval for such levies every ten years, and so may assure more reliable funding for county zoo operations.

Homestead exemption change

The bill extends the homestead exemption to surviving spouses of persons who received the homestead exemption for tax year 2013 on real property or for tax year 2014 on manufactured or mobile homes. The surviving spouse would also be permitted to receive the homestead exemption if the person who qualified for the homestead exemption in those tax years timely filed a late application that was approved by the county auditor. To qualify, the surviving spouse must be at least 59 years of age.

The cost to the state would be limited since the surviving spouse would qualify for the homestead exemption on his or her own if age 65 in 2013, or if he or she was totally or permanently disabled in that year, or met the income limit set in H.B. 59 and

otherwise qualified in 2014 or thereafter. If the surviving spouse ceased to be a homeowner, the state would thereafter incur no cost. Also, no cost to the state would result from the death of a person receiving or qualified to receive the homestead exemption in 2013 who was single or a widow or widower. Many of the persons who would benefit from this change would be age 59 to 64 on the date of death of the deceased spouse. The cost plausibly could range up to millions of dollars; however, given the limitations on those who would benefit, the cost may be less than this. LSC does not have an estimate of the cost of this change.

School districts and other units of local government are reimbursed by the state for tax revenue losses resulting from the homestead exemption, so are held harmless apart from a lag between the timing of receipt of tax revenues and of state reimbursements.

Real property tax rollback on inside millage

The bill amends language in enacted H.B. 59 to provide that a levy within the ten-mill limitation (inside millage) will qualify for the 10% rollback on residential and agricultural real property and for the 2.5% rollback on owner-occupied residences, irrespective of whether the inside millage was levied in tax year 2013. Under current law, if a portion of the ten mills is not levied in 2013, future imposition of that portion of inside millage would not be subject to the rollbacks. LSC does not have an estimate of the savings to property owners from this change or of the cost to the state to reimburse school districts and other units of local government for the resulting loss of tax revenue, or of the timing of any such effects.

Tax on qualifying pass-through entities

The bill corrects an unintended result of H.B. 510 of the 129th General Assembly. Ohio pass-through entities are required to withhold tax on behalf of their investors. However, H.B. 510 rendered the tax rate at which this is done ineffective beginning with taxable year 2013. The executive estimates that this may result in an estimated \$30 million to \$35 million revenue loss in the first year. The bill fixes this problem by specifying the rate, 8.5%, at which such entities are subject to tax and states that the change takes effect immediately when the act becomes law. Increased revenue will accrue to the GRF (about \$29 million to \$34 million) and the local government funds (about \$0.5 million to \$0.6 million each). The local government funds each receive 1.66% of GRF tax revenues. They are the Local Government Fund (Fund 7069) and the Public Library Fund (Fund 7065).

Delay in transfers to the Income Tax Reduction Fund

H.B. 59, in R.C. 5741.03, provides that a portion of voluntary Ohio use tax collections by out-of-state sellers, other than "remote small sellers" with \$1 million or less in annual sales, are to be deposited in the Income Tax Reduction Fund (ITRF, Fund 4R80). However, that bill also, in section 512.70, prohibits cash transfers to the ITRF prior to July 1, 2015. H.B. 72 reconciles these requirements by delaying the

transfers of any voluntary Ohio use tax collections by out-of-state sellers to the ITRF until that date.

Inflation adjustment of personal income tax brackets and exemptions

The bill amends language in enacted H.B. 59 pertaining to freezing personal income tax bracket amounts and the personal exemption amount in tax years 2013, 2014, and 2015, and resuming indexing thereafter. The amended language appears consistent with the anticipated operation of these sections of the act at the time of enactment, so appears to have no fiscal effect. The bill states that the change takes effect immediately when the act becomes law.

NOAA and PHS Commissioned Corps retirement pay deduction

The bill amends H.B. 59 to authorize an income tax deduction in tax year 2013 for retirement pay related to service in the Commissioned Corps of the National Oceanic and Atmospheric Administration (NOAA) and the Commissioned Corps of the Public Health Service (PHS). H.B. 59 authorizes this deduction starting in tax year 2014. The change may result in a GRF revenue loss in FY 2014 only, estimated at \$235,000. However, the bill as passed by the Senate could go into effect no sooner than January 2014 even if enacted and signed promptly.

Commercial activity tax exclusion for grain handlers

The bill amends language enacted in H.B. 59, excluding from the taxable gross receipts base of the commercial activity tax (CAT) receipts of licensed agricultural commodity handlers from the sale of agricultural commodities, to first apply the exclusion to tax periods beginning on or after January 1, 2014, rather than July 1. On an annual basis, the exclusion decreases CAT revenue by up to \$11 million, so accelerating the change by six months is expected to decrease CAT revenue in FY 2014 by some lesser amount, dependent on the seasonality of the taxable gross receipts.

CAT revenues are distributed to the GRF (50%), the School District Tangible Property Tax Replacement Fund (Fund 7047, 35%), and the Local Government Tangible Property Tax Replacement Fund (Fund 7081, 15%).

Penalties for improperly excluded qualifying distribution center receipts

The bill also changes the effective date of amendments by H.B. 59 affecting qualifying distribution center receipts (QDC), in R.C. 5751.01(F)(2)(z), making them effective for tax periods beginning on or after January 1, 2014, instead of for original returns filed on or after that date. Under current law, unchanged by the bill, taxpayers with taxable gross receipts greater than \$1 million must file by the tenth day of the second month after the end of each calendar quarter, and taxpayers with taxable gross receipts less than this amount may file annual returns, due by May 10. Thus the change appears to delay the effective date of these amendments by three months for calendar quarter taxpayers.

The amendments affecting QDC receipts change penalties for improperly excluded qualified distribution center QDC receipts. These changes may result in revenue gains or losses to the GRF, the School District Tangible Property Tax Replacement Fund (Fund 7047), and the Local Government Tangible Property Tax Replacement Fund (Fund 7081). The magnitude of any such revenue changes is dependent on the incidence of improperly excluded QDC receipts.

Historic preservation tax credits

The bill would let certain companies claim refundable historic preservation tax credits that were previously certified, but which the companies were unable to claim when the corporate franchise tax was eliminated. This provision would allow credits with an effective date on or before December 31, 2012, to be claimed for a limited period of time, prior to December 31, 2013. However, the bill as passed by the Senate could go into effect no sooner than January 2014 even if enacted and signed promptly. In testimony, Tax Commissioner Testa stated that a few companies were prevented from using these certified credits. The provision provides a means for these entities to receive credits to which they are entitled.

Other provisions

The bill allows a special taxing district, in a county with which its territory is coextensive with the territorial limits of the county and upon mutual assent between the special taxing district and the board of county commissioners, to designate the county records commission as the records commission for the special taxing district. The bill contains other provisions that appear to have no fiscal effect. Consult the LSC Bill Analysis for more detail concerning these items.