OHIO LEGISLATIVE SERVICE COMMISSION

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Office of Research and Drafting

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S.B. 57
134th General Assembly

Fiscal Note & Local Impact Statement

Click here for S.B. 57's Bill Analysis

Version: As Enacted

Primary Sponsors: Sens. Hackett and Antonio

Local Impact Statement Procedure Required: Yes

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Highlights

- **COVID-19 property valuation reductions.** Authorizing special reductions in property value due to circumstances related to COVID-19 may result in sizable revenue losses to local governments, possibly ranging to tens or hundreds of millions of dollars statewide.
- **Property tax exemption of qualifying housing.** Tax exempting housing for individuals with mental illness or substance use disorder would codify historical practice, according to witness testimony, but is contrary to a recent Board of Tax Appeals decision that a residential property with these characteristics is taxable under current law. The exemption would reduce revenue to political subdivisions by an uncertain amount that might range up to \$15 million to \$32 million statewide.
- **Tax increment financing obligations a covenant running with the land.** Specifying in law that minimum service payment obligations are a covenant running with the land, enforceable against subsequent property owners, may avoid costly delays in securing financing for development projects, and may allow projects sought by local governments to be undertaken that might not be financed in the absence of the provision.
- **Property tax valuation complaints by tenants.** By authorizing qualifying tenants of commercial or industrial property to file property tax valuations complaints, the bill may result in lower tax valuations and lower revenues to local governments.

Detailed Analysis

The bill makes several changes to property tax law. The fiscal effects are therefore mostly local. The only fiscal effect on the state is a likely increase in caseload, and possibly a backlog of cases, at the state Board of Tax Appeals (BTA) from two of the provisions, as explained below. BTA expenditures are funded by the GRF.

Special valuation complaints related to COVID-19

The bill authorizes a county board of revision, pursuant to a special valuation complaint filed for tax year 2020, to value a property for tax purposes as of October 1, 2020, instead of the January 1, 2020 tax lien date, if the reduced value is due to circumstances related to the COVID-19 pandemic or state COVID-19 orders. An eligible party must file such complaint within 30 days after the provision's effective date. The adjusted value will apply to subsequent tax years.

The bill waives the rule barring multiple valuation complaints from being filed in the same triennial valuation period for such tax year 2020 valuation complaints and valuation complaints filed for tax year 2021 or tax year 2022 that allege a reduction in a property's value due to circumstances related to the COVID-19 pandemic or state COVID-19 orders.[1]

Some types of commercial property appear more likely to be the subject of the change in the valuation complaint process that would be made by this provision of the bill. Retail businesses involving direct in-person interaction between customers and staff, such as bars and restaurants, have been closed or had their hours of operation reduced during the pandemic. Hotels, tourism, travel, and related businesses have also suffered reduced demand for services. Many office workers have worked from home during the pandemic, leaving office buildings with fewer occupants. In contrast, other types of businesses appear to have done relatively well, such as grocery stores and warehouses. Other classes of real property, including residential and agricultural, appear less likely to have property complaints filed for them as a result of this provision of the bill.

Commercial real property in the state had a taxable value in 2020 of about $46.8 billion, equivalent to market value of $134 billion at Ohio's 35% assessment rate for real property. The statewide average effective tax rate on Class II real property, which includes commercial real property, was about 75 mills or 7.5% in 2019. The implied tax on commercial real property was about $3.5 billion. These figures imply that for each 1% decline in the statewide average value of commercial real property that results from the provisions of the bill, tax revenue to school districts and other units of local government would decline about $35 million. Although LBO does not have a basis for estimating the magnitude of the decline in property values that might result from this provision of the bill, the tax revenue loss to local governments clearly could be sizable, in the tens or hundreds of millions of dollars statewide.

The bill could be expected to increase, likely greatly increase, the number of valuations appealed to boards of revision (BORs). This anticipated bulge of cases could in turn increase the number of cases appealed to BTA. Processing this many appeals at the local and state levels would plausibly result in lengthening backlogs of cases, and long delays for appellants, as these tribunals determine the merits of the increased number of cases. BTA expenditures are funded by the GRF.

The bill includes similar provisions for adjustment of tax valuations for tax years 2021 and 2022 to take account of the effects of the COVID-19 pandemic or a state COVID-19 order on the

[1] Under current law, an eligible party may generally file a valuation complaint with respect to a particular parcel only once in each triennial valuation period.

value of the property. The value determinations would be as of January 1 of each year, rather than October 1, but otherwise the provisions are similar to those for 2020.

As with the provisions for 2020, LBO does not have a basis for estimating the magnitude of the decline in property values that might result for tax years 2021 and 2022, but the tax revenue loss to local governments could be in the tens or hundreds of millions of dollars. The number of valuations for tax years 2021 and 2022 appealed to boards of revision and to the state Board of Tax Appeals could be sizable, though many such valuations may be lowered in complaints filed for 2020.

Property tax exemption of qualifying housing

The bill would exempt from property tax housing for persons with mental illness or substance use disorder and their families residing with them, if the property meets certain requirements. It must be owned by an institution that is either qualified for federal income tax exemption as an IRC section 501(c)(3) organization with a primary purpose to provide supportive housing to such persons, or is owned or controlled by one or more such organizations. In addition, one or more of these tax-exempt organizations must receive at least some funding to provide such housing from the Department of Mental Health and Addiction Services, one or more county boards of alcohol, drug addiction, and mental health services, or a local continuum of care program.

As discussed in the bill analysis, a recent Board of Tax Appeals decision ruled that such housing is not tax exempt under current law. For nonprofit residential property to be tax-exempt, it must generally be specifically exempted in the Revised Code.[2]

LSC does not have independent knowledge of the number of properties in Ohio that meet the qualifications for tax-exemption in the bill. The analysis that follows is based on testimony in a hearing on the bill before the Senate Ways and Means Committee on February 17, 2021. One witness in that hearing said that approximately 6,000 housing units statewide would be affected. Another witness said there are more than 13,000 such housing units statewide.

Housing permit data provide a basis for valuing such units. In 2020, permits for 9,241 housing units in buildings with five or more units were obtained in Ohio, valued at $873 million. The implied average unit value was about $94,000, or a taxable value of about $33,000 per unit at Ohio's 35% assessment rate. This provides an estimate of the statewide average replacement cost of such units, which may somewhat overstate the values that county auditors would place on such property. At $33,000 per unit, 6,000 such units would have a taxable value of nearly $200 million; 13,000 units would have taxable value near $430 million. If we assume an average statewide effective tax rate for class II real property of about 75 mills, taxes per year would range from $15 million to $32 million.

Witness testimony on S.B. 57 indicates that such property has generally been tax-exempt in the state. In the absence of the change made by the bill, how quickly cases would be brought to implement the Board of Tax Appeals position regarding the taxability of such properties, and how widespread such action might be, appears uncertain. The fiscal effect of the bill is evaluated

[2] BTA No. 2018-649, https://ohio-bta.modria.com/casedetails/512991.

in this fiscal note assuming that similar properties in the state would be widely deemed to be taxable under current law.

Tax increment financing service payment obligations

The bill specifies that tax increment financing (TIF) service payment obligations arising from an agreement between the property owner and a local government guaranteeing future TIF service payment obligations against subsequent property tax exemptions are enforceable against subsequent property owners. This change applies to any proceedings commenced after, or pending on, the provision's effective date and any instruments recorded on, before, or after that date.

The change may result in cost savings to local governments by avoiding costly delays in securing financing for development projects, and may in some cases allow projects sought by local governments to be undertaken that might not be financed in the absence of the provision. The provisions of the bill would also apply retroactively to such TIF service payment obligations if proceedings in such cases are pending on the effective date of this change.

Under continuing law, minimum service payments by property owners to political subdivisions ensure sufficient funding to finance improvements made under TIF arrangements. A TIF is an economic development tool used by a county, municipality, or township to finance public infrastructure improvements and, in certain circumstances, residential rehabilitation. With a TIF, property owners are granted an exemption from property taxes on the increased value of property, but instead make minimum service payments to the subdivision. The minimum service payments fund public improvements related to property development, and the improvements are often financed by issuing debt backed by receipts from future minimum service payments.

The bill specifies that all TIF minimum service payment obligation agreements are enforceable against subsequent property owners, stating specifically that such an obligation shall be a covenant running with the land. Continuing law provides that such payments are to be considered taxes for all purposes, including for lien priority and collection, but does not specifically provide that such a payment is a covenant running with the land. This provision only applies to obligations arising from an agreement between a property owner and a local government. In other words, the bill clarifies that there are separate enforcement provisions for service payment obligations prescribed by statute and those obligations arising from an agreement between the property owner and a local government. The absence of such language in current law reportedly has resulted in difficulties obtaining financing, sometimes blocking or delaying development projects, particularly larger ones for which financing was sought from insurance companies. In practice, many service payment agreements address this issue by including such a clause.

Filing of property tax value complaints by tenants

The bill authorizes tenants of commercial or industrial property to file property tax valuations complaints or counterclaims if (1) the tenants are required under the lease agreements to pay the entire amount of taxes charged against the property and (2) the landlords, either through the lease or otherwise, authorize the tenants to file the complaints or counterclaims. The bill would apply to complaints or counterclaims filed for tax year 2021 or any tax year thereafter.

By permitting additional parties to file property tax complaints, the bill may result in lower tax valuations and lower revenues to local governments. The situation that this provision of the bill addresses apparently is sufficiently common that the potential number of such complaints could be sizable. The magnitude of resulting revenue losses appears uncertain. The change plausibly could result in additional filings with BORs and perhaps also increase appeals to BTA. Increases in complaints would tend to increase costs of BORs and BTA, to lengthen delays and backlogs in considering complaints, or both. The magnitude of cost increases or delays appears uncertain. As noted above, BTA expenditures are funded by the GRF.

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