

CBA Real Property Committee

LEGISLATIVE UPDATE

As of 11/6/06

**LEGISLATION OF INTEREST TO
REAL PROPERTY LAWYERS
INTRODUCED IN THE 126TH GENERAL ASSEMBLY
OF THE OHIO LEGISLATURE**

HOUSE BILLS

H.B. No. 66 Tax Structure

Makes several dramatic changes to the tax structure in Ohio, including the elimination of the 10 percent rollback in real property taxes applicable to most commercial and industrial property. (Governor signed 6/30/05. Effective 6/30/05.)

H.B. No. 113 Real Estate Sales/Appraisals

Would amend Ohio's real estate sales/appraisal laws in several respects, including (1) to prohibit registration of an applicant as a mortgage broker or loan officer, certification or licensure of an applicant as a real estate appraiser, or registration as a real estate appraiser assistant if a criminal background check shows that the applicant has been convicted of or pleaded guilty to any criminal offense involving theft, receiving stolen property, embezzlement, forgery, fraud, passing bad checks, money laundering, drug trafficking or any criminal offense involving money or securities; (2) to prohibit the appraisal of real estate without state certification or licensure; and (3) to prohibit a person from knowingly affecting the independent judgment of an appraiser as to a dwelling's value. (Assigned to House Financial Institutions, Real Estate and Securities Committee.)

H.B. No. 149 Tax Credit for Rehabilitation of Historic Buildings

Would create a nonrefundable tax credit against the corporation franchise tax or personal income tax equal to 25% of the dollar amount of the taxpayer's expenditures for rehabilitating historic buildings. (Passed the House 5/16/06. Assigned to Senate Ways and Means and Economic Development Committee.)

H.B. No. 244 Title Insurers

Would amend Ohio's title insurance laws in several respects, including (1) requiring title insurance agents issuing a policy to a lender in conjunction with a residential mortgage loan to give written notice to the mortgagor when no owner's title policy has been requested that explains that the lender's policy does not provide title insurance protection to the mortgagor; (2) requiring every title insurance agent and subcontractor that performs title searches to maintain an errors and omissions policy for the benefit of the title company; and (3) requiring a title company to issue settlement protection to the lender, borrower, and seller of real property against the loss of settlement funds resulting from theft, misappropriation, fraud or any other failure to properly disburse settlement funds or comply with any written closing instructions by the company's title insurance agent. (Assigned to House Insurance Committee.)

H.B. No. 288 Abandoned Mineral Rights

Would amend Ohio law governing the vesting of abandoned mineral rights, including (1) revising some of the circumstances in which a mineral interest held by a person other than the owner of the

surface of the lands can be deemed abandoned and thus vested in the owner; and (2) adding new, specified notification and affidavit requirements for the allowable vesting to occur. (Governor signed 3/28/06. Effective 6/30/06.)

H.B. No. 294 Expedited Foreclosure for Abandoned Lands

Would enact Sections 323.65 to 323.75 of the Revised Code to provide an expedited foreclosure procedure for lands that have had delinquent tax charges for a specified number of years and are not occupied. (Signed by Governor 6/28/06. Effective 9/28/06.)

H.B. No. 299 Levy Impact Fees

Would enact Sections 5755.01 to 5755.12 of the Revised Code to authorize counties, townships, and school districts to levy impact fees on new development to finance capital improvements, so long as a land use plan has been adopted. (Assigned to House Local and Municipal Government and Urban Revitalization Committee.)

H.B. No. 304 Water/Sewage/Service Liens

Would modify the circumstances under which a lien may be created and an action at law commenced to collect unpaid water, sewage and other service charges owed local authorities. (Assigned to House Civil and Commercial Law Committee.)

H.B. No. 331 Moratorium on Eminent Domain

Would establish a moratorium on the use of eminent domain by any public body of the state to take unblighted private property when the primary purpose for the taking is economic development that will result in ownership of the property being vested in another private person and establishing a Legislative Task Force to Study Eminent Domain. (Assigned to House Civil and Commercial Law Committee.)

H.B. No. 394 Conservancy District Plans

Modifies the procedure by which the board of directors of a conservancy district may amend the official plan of the district. (Assigned to House Agriculture and Natural Resources Committee.)

H.B. No. 400 Industrial Minerals Mining

Would revise the distribution of revenues from the severance tax on industrial minerals and exempt industrial minerals mining operations from the state mine safety laws and instead provide for the adoption of federal mine safety requirements. The bill would also revise the zoning laws concerning industrial minerals mining to add that a zoning resolution must allow the activities that are permitted and regulated under the law governing industrial minerals mining and any related processing activities and must designate those activities as either a permitted use or a conditional use in any district or zone in which aggregate minerals are located. This bill is akin to S.B. 191. (Assigned to House Agriculture and Natural Resources Committee.)

H.B. No. 402 Private Attorney Property Tax Collections

Would provide specific funding sources and methods of payment for private legal counsel who assist the county treasurer and the prosecuting attorney in the collection of delinquent taxes assessed against personal property, manufactured or mobile homes, or intangible property. (Assigned to House Judiciary Committee.)

H.B. No. 404 Urban Homestead Zones

Would permit the creation of urban homestead zones in cities to encourage the repopulation of certain city areas, would create a state urban homestead scholarship program and would require tax increment financing in urban homestead zones that participate in the scholarship program to help fund the program. (Assigned to House Economic Development and Environment Committee.)

H.B. No. 407 Residential Community Association Developments

Would define and establish requirements for residential community association developments. The bill defines “residential community association development” as a grouping of two or more homes developed pursuant to a common plan that provides for common areas and facilities for which the homeowners are responsible due to a covenant in the deed or other condition of ownership. The bill specifically sets forth that a condominium development is not a residential community association development. (Assigned to House Local and Municipal Government and Urban Revitalization Committee.)

H.B. No. 412 Disclosure of Methamphetamine Manufacturing Use

Would require a seller or landlord of real property to disclose whether the property was a site for the manufacture of methamphetamine if the seller or landlord has actual knowledge of that use. The bill would require the disclosure form prescribed by ORC § 5302.30 to be revised to include disclosure of knowledge regarding the illegal manufacture of methamphetamine on the property. (Assigned to House Commerce and Labor Committee.)

H.B. No. 446 Timber Property Taxes

Would include land used for the commercial production of timber within those uses of real property which qualify for a partial exemption from real property taxation. (Assigned to House Finance and Appropriations Committee.)

H.B. No. 463 Title Search

Would require a county recorder to post notice in the recorder’s office that persons conducting a title search for a property should consult land-use plans or maps, zoning ordinances, and zoning maps, if any, of the political subdivisions where the property is located for additional information. (Assigned to House Local and Municipal Government and Urban Revitalization Committee.)

H.B. No. 467 Building Energy Standards

Would require the design, construction, renovation and maintenance of state buildings and school buildings, through rules adopted by the Director of the Department of Development, to comply with the Leadership in Energy and Environmental Design (LEED) Green Building Rating System Silver Certification of the United States Green Building Council. (Assigned to House Public Utilities and Energy Committee.)

H.B. No. 487 Home Construction

Would require that a notice of commencement be filed for home construction contracts, which are currently exempt from the requirement under the law, if a lending institution requires it as part of the financing for a home construction contract which is secured in whole or in part by a mortgage on the real property being improved. Further, the bill provides that a notice of commencement for all types of projects (not just home construction) expires six years after its filing date; currently there is no expiration date specified by the law. The bill also provides an exception to the notice of furnishing requirement for subcontractors and material suppliers: when a lending institution, as part of the financing for a home improvement project, has required that the notice of commencement be filed, a

subcontractor or material supplier need not serve a notice of furnishing in order to preserve lien rights. (Assigned to House Financial Institutions, Real Estate, and Securities Committee.)

H.B. No. 491 Real Estate Broker Law

Would add definitions to real estate broker law, including “exclusive right to sell or lease listing agreement,” “exclusive agency agreement,” “exclusive purchaser agency agreement” and “seller”. Would also expand the duties of licensees. (Passed Senate 5/23/06.)

H.B. No. 492 Transfer Development Rights

Would permit townships, counties and combinations of certain political subdivisions to establish transfer of development rights programs. The bill defines a “transfer of development rights program” as a voluntary program adopted under this section whereby the owner of a parcel of real property in a sending district may transfer development rights for application and use on a parcel of real property in a receiving district. The bill includes as “development rights”: (1) an increase in height, bulk, number of stories and size of buildings, density of population or square footage; (2) a decrease in the number of parking spaces; (3) a decrease in the set back building lines and sizes of yards; (4) a waiver of sewer and water tap-in fees; (5) a reduction/elimination of applicable county impact fees; and (6) any other right that increases the density or intensity of development. (Assigned to House Local & Municipal Government & Urban Revitalization Committee.)

H.B. No. 493 Fire Extinguishers and Carbon Monoxide Detectors

Would require fire extinguishers and carbon monoxide detectors to be installed in residential units and would require transferors of residential real property to disclose whether fire extinguishers and carbon monoxide detectors are installed in their property. Further, the bill allows a transferee to rescind a transfer agreement if the transferee receives a form indicating that the property does not contain functioning fire extinguishers and carbon monoxide detectors as required. (Assigned to House Commerce and Labor Committee.)

H.B. No. 497 Contractor Retainage Rules

Would modify provisions governing the practice of withholding a percentage of payment from contractors, subcontractors and material suppliers in the form of retainage on both public improvement projects and in the private sector. This bill is akin to S.B. 270. (Assigned to House Commerce and Labor Committee.)

H.B. No. 505 Environmental Laws

Would require that state environmental laws be construed to be no more stringent than the corresponding federal law addressing the same subject matter. This bill is akin to S.B. 264. (Assigned to House Economic Development and Environment Committee.)

H.B. No. 514 Mortgage Brokers

Would expand the Consumer Sales Practices Act to cover transactions involving mortgage brokers and their clients. (Assigned to Financial Institutions, Real Estate & Securities Committee.)

H.B. No. 566 Airport Zoning

Would apply the Airport Zoning Law to public utility or railroad buildings or structures that create an airport hazard. (Assigned to House Transportation, Public Safety and Homeland Security Committee.)

H.B. No. 581 State Privatization Contracts

Would establish a new competitive selection process for state agencies entering into privatization contracts. The bill defines “privatization contract” as an agreement or combination or series of agreements, and amendments thereto, by which a private contractor agrees with a state agency to provide services, valued at \$50,000 or more, which are substantially similar to and in lieu of services provided or that could have been provided by a public employee. (Assigned to House State Government Committee.)

H.B. No. 593 Mortgage Broker/Lender – Prorated Renewal Fee

Would require the Superintendent of Financial Institutions to adopt rules to establish prorated renewal fees for a mortgage broker or loan officer certificate of registration or license based upon the number of months the initial mortgage broker certificate or loan officer license has been in effect prior to the first renewal date. (Assigned to House Financial Institutions, Real Estate and Securities Committee.)

H.B. No. 599 Prohibited Assessments in Conservancy District

Would prohibit the board of directors of a conservancy district from levying in the future either a “benefits assessment” or a “maintenance assessment” on land that is owned by a school district, volunteer fire department, or church or on a political subdivision located in the district. (Assigned to House Local and Municipal Government and Urban Revitalization Committee.)

H.B. No. 648 Homestead Exemption

Would extend the homestead exemption to individuals having annual incomes of \$50,000 or less and change the manner in which the homestead exemption tax reduction is calculated for certain eligible homeowners. This bill is akin to S.B. 364. (Assigned to House Finance and Appropriations Committee.)

H.B. No. 651 Tax Freeze for Low-Income Seniors

Would freeze real property taxes each year for which the eligible person obtains a certificate of reduction. The reduction shall equal the amount necessary to make current taxes equal to “original taxes”, which means the amount of taxes charged for the tax year preceding the tax year in which an eligible person applies for the reduction. Eligible persons include persons 65 years or older with a total income less than or equal to \$35,000. (Assigned to House Finance and Appropriations Committee.)

SENATE BILLS

S.B. No.127 Lake Erie Coastal Management

Would change Ohio law relating to coastal management and the control of erosion along Lake Erie, including (1) specifying that the state’s ownership of the land and waters of Lake Erie is subject to the littoral rights of littoral owners; and (2) specifies that littoral owners have the right to make reasonable use of the submerged lands and waters fronting their land. (Assigned to Senate Environment and Natural Resources Committee.)

S.B. No. 144 Registration of Foreign Real Estate Appraisers

Would amend Ohio’s Real Estate Appraisers Law to recognize, on a temporary basis, a certification or license issued in another state and to temporarily register, rather than issue a temporary license, to an appraiser certified in another state if (1) the temporary registration is to perform an appraisal assignment that is part of a federally related transaction; (2) the appraiser’s business in Ohio is of a

temporary nature; and (3) the appraiser registers with the Real Estate Appraiser Board. (Signed by Governor 12/22/05. Effective 3/29/06.)

S.B. No. 147 Conveyance of State-owned Real Estate

Governor has signed this legislation that authorizes the conveyance of various parcels of state-owned real property throughout the state to various parties. (One section is effective 8/16/05, the remaining sections are effective 11/15/05.)

S.B. No. 148 Electronic Recording of Federal Liens

Would amend Section 317.09 of the Revised Code to authorize a county recorder to use electronic mediums for recording federal tax and other federal liens. (Signed by Governor 4/18/06. Effective 7/20/06.)

S.B. No. 162 Mortgages

Would revise Ohio law governing mortgage brokers and licensed mortgage lenders, including civil penalties and advertisement requirements; and to enact consumer protection laws relating to mortgages, particularly allowing an elderly person or disabled adult who have been affected by violation of the law to receive treble damages for the injury suffered, plus reasonable attorney's fees and court costs. (Assigned to Senate Finance & Financial Institutions Committee.)

S.B. No. 167 Moratorium on Eminent Domain

Would establish a moratorium on the use of eminent domain to take, without the owner's consent, private property that is in an unblighted area when the primary purpose for the taking is economic development that will result in ownership of the property being vested in another private person. (Governor signed 11/16/05. Effective 11/16/05.)

S.B. No. 177 Real Property Tax Rollback

Would extend the 10% real property tax rollback to include land used for the commercial production of timber. (Assigned to Senate Ways & Means & Economic Development Committee.)

S.B. No. 180 Eminent Domain

Would prohibit the use of eminent domain authority when the primary purpose for the taking is economic development. Would provide that any political subdivision that appropriates real property for economic development forfeits any funding it is entitled to receive from the local government fund or the library and local government support fund (R.C. §5747.03) or the local government revenue assistance fund (R.C. §5747.61) for the remainder of the biennium in which the taking occurs. (Assigned to Senate State & Local Government & Veterans Affairs Committee.)

S.B. No. 191 Mineral Severance Tax

Revises the distribution of revenues from the severance tax on minerals; exempts industrial minerals mining operations from the state mine safety laws and instead provides for the adoption of federal mineral safety requirements. Also, revises zoning laws concerning industrial minerals mining. Bill amends current zoning law to add that a zoning resolution must allow the activities that are permitted and regulated under the law governing industrial minerals mining and any related processing activities and must designate those activities as either a permitted use or a conditional use in any district or zone in which aggregate minerals are located. (Assigned to Senate Environment and Natural Resources Committee.)

S.B. No. 193 Land Resource Leases

Current law authorizes the Department of Administrative Services and the Directors of Mental Health, Rehabilitation and Correction, and Mental Retardation and Developmental Disabilities to lease for the removal of oil and gas property owned by the state and placed under the supervision of their respective departments. The bill eliminates this existing authority and creates the Oil, Gas, and Timber Leasing Board, endowed with the authority to enter into leases for the drilling of oil or gas or the harvesting of timber on land owned or controlled by state agencies. (Assigned to Senate Environment and Natural Resources Committee.)

S.B. No. 198 Property Tax Deferrals

Permits elderly and disabled taxpayers with limited incomes to defer payment of real property taxes due on their homesteads. (Assigned to Senate Ways, Means and Economic Development Committee.)

S.B. No. 199 Consumer Sales/Mortgage Brokers

Eliminates the requirement that information related to examination and investigations of mortgage brokers remain privileged and confidential. (Assigned to Senate Finance and Financial Institutions Committee.)

S.B. No. 204 Foreclosure Process

Would provide an expedited foreclosure procedure for lands that have had delinquent tax charges for a specified number of years and are not occupied. (Assigned to Senate Ways, Means and Economic Development Committee.)

S.B. No. 207 Home Inspector Licenses

Would create the State Board of Home Inspectors, require the licensure of home inspectors, and regulate the licensure and performance of home inspectors. (Assigned to Senate Insurance, Commerce and Labor Committee.)

S.B. No. 224 Solid Waste Moratoria

Would establish a moratorium on the issuance of permits for new solid waste landfills and expansions of existing landfills and licenses for new construction and demolition debris facilities and expansion of existing facilities in counties included in the Regional Hydrologic Study of the Tuscarawas River Basin. (Assigned to Senate Environment and Natural Resources Committee.)

S.B. No. 234 Construction/Demolition Debris Facilities

Revises the statutes governing construction and demolition facilities and declares an emergency. The bill requires, among other things, the issuance of a permit to install a new construction and demolition debris facility or expansion of an existing facility in lieu of an initial license and requires an applicant for such a permit to include background information regarding past violations of environmental laws in the application. (Assigned to Senate Environment and Natural Resources Committee. Committee reported 12/14/05.)

S.B. No. 264 Environmental Laws

Would require that state environmental laws be construed to be no more stringent than the corresponding federal law addressing the same subject matter. (Assigned to Senate Environment and Natural Resources Committee.)

S.B. No. 270 Contractor Retainage Rules

Would modify provisions governing the practice of withholding a percentage of payment from contractors, subcontractors, and material suppliers in the form of retainage. This bill is akin to H.B. 497. (Assigned to Senate Insurance, Commerce, and Labor Committee.)

S.B. No. 275 Consumer Mortgage Commission

Would create the Ohio Consumer Mortgage Commission to provide, supervise and coordinate financial grants for programs that educate consumers in financial decision-making, mortgage borrowing and predatory lending practices. The bill would also transfer enforcement authority for the Mortgage Broker's Act from the Superintendent of Financial Institutions to the Attorney General. Under the bill, the Attorney General is authorized to create predatory lending strike forces to conduct an investigation focused upon any financial institution or mortgage broker in any county of the state. The bill would also require first-time home buyers to receive pre-purchase home buyer counseling and establishes additional prohibitions and requirements for financial institutions, real estate appraisers and mortgage brokers. (Assigned to Senate Finance and Financial Institutions Committee.)

S.B. No. 276 Tax Exemption

Would permit local taxing authorities to exempt from new property tax levies the homes of elderly persons. (Assigned to Senate Ways and Means and Economic Development Committee.)

S.B. No. 292 Concealed Weapons

Would permit political subdivisions to prohibit the carrying of concealed handguns in any park, swimming pool, sports field, or other outdoor premises or property owned, leased, or otherwise under the control of the political subdivision. (Assigned to Senate Judiciary – Criminal Justice Committee.)

S.B. No. 305 Hotel Licensing

Would exempt long-term stay hotels from the Hotel License Law. The bill sets forth long-term stay hotels as commercial lodging houses with more than three units in which all of the units are constructed, approved, and certified by the building official having jurisdiction over the building as residential occupancies where the occupants are primarily transient in nature if all of the units are kept, used, maintained, and advertised as transient residences and where the minimum stay of the occupant is more than thirty days but less than one year. (Passed Senate 5/24/06. Assigned to House Commerce and Labor Committee.)

S.B. No. 327 Omnibus Land Conveyances

Would authorize the conveyance of several parcels of state-owned property, including properties no longer needed for armory or military purposes, among others. (Assigned to Senate Finance and Financial Institutions Committee.)

S.B. No. 364 Homestead Exemption

Would extend the homestead exemption to individuals having annual incomes of \$50,000 or less and change the manner in which the homestead exemption tax reduction is calculated for certain eligible homeowners. This bill is akin to H.B. 648. (Not assigned to Senate committee to date.)

S.B. No. 366 Telecommunication Towers

Would expand township and county zoning authority to telecommunications towers located in areas zoned for agricultural use and modify notice requirements to provide written notice to each

owner of property within 2,000 feet of the property on which the tower is proposed to be constructed. (Not assigned to Senate committee to date.)