HOUSE BILL 344
OPPONENT TESTIMONY
April 30, 2024

Dear Chairman Roemer, Vice Chair Lorenz, Ranking Member Troy, and members of the House Ways and Means Committee. I am Bethany Sanders, Director of Policy & Strategic Initiatives for Franklin County Auditor Michael Stinziano.

Thank you for the opportunity to comment on H.B. 344, which proposes further adjustments to the procedures for challenging property value at the Board of Revision considering the uncertainty triggered by the past changes in H.B. 126. We agree with the bill sponsor and other witnesses that the H.B. 126 changes have left many open questions but are concerned that the proposed changes will exacerbate rather than solve this issue and cause lasting confusion going forward.

The major areas where the H.B. 126 issue has complicated BOR review relate to the constitutional uniformity clause, sales definitions, disclosure of information, and appeals. These items are being litigated in several common pleas and appeals courts with some issues already reaching the Ohio Supreme Court. In Franklin County alone, more than 700 complaints from last year's filing season were dismissed under HB126 after being filed to preserve the constitutional argument that is currently proceeding. This bill does not and cannot address the constitutional questions on the limitation of appeals and complaints without simply reverting to pre-HB 126 law.

We have already been required to significantly adjust case management and scheduling procedures to adapt to how cases are now handled. This includes more time and more evidence at the BOR stage given appeal limitations, and a tighter filing timeline for counter complaints puts pressure on processing and making information public. There are certainly procedural issues that could be corrected in what passed in H.B. 126-like the mandatory one-year dismissal and the rolling counter complaint deadline without raising a likelihood of new litigation or constitutional claims.

We recognize the legislature may not be inclined to wait for determination of these issues before acting, but changes could still be made to H.B. 344 minimize the impact and address some of the unforeseen consequences of H.B. 126.

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The adjustments to sale timing requirements should not protect LLC drop and swap sales from review.

The bill proposes to limit political subdivision complaints to when a sale has occurred in the two years prior to the lien date as evidenced by a conveyance fee statement. The timing portion of this definition is reasonable. Unfortunately, it creates further incentive for property owners to engage in LLC drop and swap sales which do not require a conveyance fee statement or paying of the conveyance fee. This type of sale also deprives the public of understanding who controls property and deprives auditors of key data to determine values not just for sold properties but the market as a whole.

Since H.B. 126 has been in effect several BOR cases in Franklin County were filed by school districts to challenge the value of a property that had been sold, just not with a conveyance fee statement. Evidence of the sale can include listings purchase agreements, mortgages, and the status and value of the property from public or proprietary sources like Costar. This in-depth review to counter loopholes in existing law remains an important function of the BOR that would be cut off by this legislation.

Punitive measures for wrongly filed complaints should be removed and are outside the scope of the Board of Revisions expertise.

The bill as drafted would require the Board of Revision assess a penalty against political subdivisions who file a complaint in violation of the procedural requirements in 5715.19, including the new sale limitation and "on behalf of" limitations in this proposal. Circulated amendments and the proposed substitute bill adjust that to be costs and reasonable attorneys' fees, we ask that all penalty provisions be removed.

Boards of Revision are quasi-judicial but are not courts and do not have the tools to make appropriate determinations on amounts of fees and costs, including both the lack of discovery powers and the new administrative burden this would create. In addition, the appeal limitation seems to suggest that a political subdivision's only recourse for disagreeing with a fee would be to wait until the prosecutor attempts to enforce it and then fight the legitimacy or amount causing further drawn-out common pleas court proceedings before matters are finally settled.

Refine the definition of "on behalf of" for purposes of determining if a political subdivision is the true filing party.

The definition of a third party acting "on behalf of" a school district is incredibly broad to include all employees of the district filing on any property not their own regardless of if they are directed to file the complaint. The bill as introduced, but not recently circulated amendments or the substitute bill gives a political subdivision an ability to provide information the complaint is not on their behalf. This means that if any employee of a political subdivision files a third-party complaint, the political subdivision is essentially pulled into the case and subjected to the penalty provisions in the bill regardless of if it is in fact coordinated. This definition should be reviewed to allow tracking of when the third party is in fact coordinated with a political subdivision versus when they are simply filing on their own behalf.

Proxy complaints do add administrative burden to the BOR but given the H.B. 126 litigations and the related pending legal questions we understand why they are used. Limiting when a school district can use a coordinated counter complaint to act when they could not act by original complaint is worth exploring, but as drafted the definition could readily cause additional confusion and questions. Addressing the actions of school districts should not curtail independent third-party property owners from accessing the Board of Revision.

Appeals should to the Board of Tax Appeals should be restored as better for both parties.

The appeal limitation in H.B. 126 is a major problem. These cases should be heard by the BTA with the expertise and familiarity to make sure we are getting uniform rules applied to property valuation. Appeals to the common pleas courts, the only avenue currently left to political subdivisions are more time intensive, expensive, and administratively burdensome for both the parties to the case and the Boards of Revision themselves. For example, common pleas cases require a transcript of the lower proceeding, whereas BTA accepts recordings in other forms.

The limitation on appeals is also a major driver of the use of proxy or straw man third party complaints since it is a legal means for the school district to argue to the BTA and include evidence not available at the BOR level.

Despite the complications of common pleas appeals, this is still preferable to no appeal rights at all especially since the Board of Revision lacks to the tools to determine value with all relevant information.

Since the Board of Revision cannot compel discovery and only issue unenforceable requests for information, the appellate level is the only place that key evidence of value may appear. Eliminating any appeal option but only for one side of the case will increase the likelihood of inaccurate or unfair results. We ask that instead this legislation restore appeal rights for all parties to the Board of Tax Appeals.

Conclusion

I understand the impulse to attempt to correct unforeseen consequences of prior legislation, but care is warranted to not add further complications. I hope the committee will pause and adjust the bill to address these issues. Ultimately, we want the most accurate possible value on every property in Franklin County, and the Board of Revision remains an important tool to reach that goal.

Thank you for time and attention to this legislation and our concerns. Never hesitate to reach me directly at besanders@franklincountyohio.gov or 614-525-4931 or Auditor Stinziano at AuditorStinziano@franklincountyohio.gov or 614-525-5700. We would be glad to provide additional information or work on alternate proposals to address these concerns.