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County Land Bank Program Extended to More Counties

On April 7, 2010, Governor Strickland signed into law House Bill 313, effective July 7, 2010. This legislation expands upon Senate Bill 353, passed in 2009, that authorized a county to establish a nonprofit county land reutilization corporation (CLRC). As reported in our Winter 2009 Ohio Public Law Update, Senate Bill 353 authorized a county with a population in excess of 1.2 million to form a CLRC to promote economic and housing development and to facilitate the reclamation, rehabilitation and reutilization of vacant, abandoned and foreclosed properties. To facilitate the CLRC program, Senate Bill 353 authorized the county treasurer in a county in which a CLRC has been created to make advance payments to taxing units of current year unpaid taxes and current year delinquent taxes. Once those taxes and delinquencies were collected, the county treasurer would deposit any penalties and interest collected in a special fund for the CLRC. HB 313 expands the CLRC program to apply to any county with a population in excess of 60,000.

HB 313 also modifies the requirements for membership of the board of the CLRC. It now must include five, seven or nine members consisting of the county treasurer, at least two members of the board of county commissioners, one representative of the largest municipal corporation (based on population according to the most recent decennial census) located in the county, one representative of a township with a population of at least 10,000 in the unincorporated area of the township (according to the most recent decennial census), if such a township exists in the county, and any remaining members selected by the treasurer and the county commissioners who are members

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of the corporation's board. At least one board member must have private sector or nonprofit experience in rehabilitation or real estate acquisitions.

HB 313 also authorizes a county treasurer to enter into an agreement with the CLRC to pledge the penalties and interest on current year unpaid taxes and current year delinquent taxes to the payment of debt service on debt obligations issued by the CLRC.

Issuers of Qualified Energy Conservation Bonds Issued After March 18, 2010 Can Elect Direct-Payment Subsidies in Lieu of Tax Credits to Bondholders

An issuer of qualified energy conservation bonds (QECBs) issued after March 18, 2010 can elect to receive a direct-payment subsidy from the federal government equal to the *lesser of* (i) 100 percent of the interest (at a taxable rate) paid by the issuer on each interest payment date *or* (ii) 70 percent of the "qualified tax credit bond rate" announced by the US Department of the Treasury (Treasury) in lieu of the otherwise available tax credit to bondholders. The direct-payment option is expected to result in the issuance of more QECBs in much the same way as the direct-payment option for Build America Bonds (BABs) has resulted in a significant issuance of BABs.

The qualified tax credit bond rate and maximum maturity of QECBs are determined by the Treasury and are published online by the Bureau of the Public Debt. For a particular QECB issue, those are determined as of the first day on which there is a binding, written contract for the sale of the QECBs. For example, if a QECB issue had been sold on April 27, 2010, the maximum maturity would have been 17 years and the qualified tax credit bond rate would have been 5.70 percent (70 percent of which would have been 3.99 percent).

QECBs can be issued to finance a "qualified energy purpose." A qualified energy purpose includes, among other things, capital expenditures incurred for purposes of (i) reducing energy consumption in publicly owned buildings by at least 20 percent, (ii) implementing green community programs, and (iii) wind facilities, closed-loop and open-loop biomass facilities, geothermal facilities, solar energy facilities and qualified hydropower facilities. For a more detailed description of the types of projects financeable by QECBs see our February 2009 Public Finance Alert.

An issuer must have QECB issuance authority in order to issue QECBs. The Treasury has allocated the national QECB issuance authority to the states. Each state is required to suballocate a portion of its QECB issuance

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authority to large local governments (municipalities or counties with a population of at least 100,000). A large local government can waive all or a portion of its suballocation of QECB issuance authority. Such waived authority then reverts to the state. The state can then either issue QECBs or reallocate the waived issuance authority.

In 2009 Ohio received an allocation of $119,160,000 of QECB issuance authority. The Ohio Air Quality Development Authority, pursuant to Section 3706.04(R) of the Ohio Revised Code, is charged with allocating that amount and reallocating any portion thereof waived by a county or municipality.

Election Deadline Changes

Amended Substitute House Bill 48, effective July 2, 2010, revises filing deadlines for ballot questions and issues, and candidate and other petitions – generally requiring that filings be made 15 days earlier than under current law. Among other matters, this legislation requires that tax levy and bond issue questions be certified to county boards of elections at least 90 days prior to the election at which they are to be placed on the ballot. Deadlines for necessary preliminary actions and filings are also adjusted accordingly.

This legislation will apply to proceedings for ballot questions and issues submitted at elections taking place *after* August 3, 2010.

Recent Decisions of Interest

The "public-duty rule" adopted by the Ohio Supreme Court in *Sawicki v. Ottawa Hills (1988), 37 Ohio St. 3d 222* (which ruled on a matter that arose prior to the enactment of R.C. Chapter 2744), is not applicable in civil actions brought against employees of political subdivisions for wanton or reckless conduct. *Estate of Graves v. Circleville, 124 Ohio St. 3d 339*

Grant of writ of mandamus to compel governmental body to commence an appropriation proceeding on property owner's physical taking claim was affirmed since there was sufficient evidence to establish that governmental body deposited sewage in creek (because of a pump station which repeatedly overflowed) that flowed through the property. *State ex rel. Gilbert v. Cincinnati, 2010-Ohio-1473 (Ohio Supreme Court)*

A Joint Economic Development Zone (JEDZ) was created by a contract entered into by two municipalities and a township pursuant to R.C. Section 715.691. The board of directors of the JEDZ (i) levied an income tax within the

JEDZ and distributed the net proceeds thereof in equal shares to the municipalities and the township and (ii) entered into a contract with the township to provide all "usual and customary governmental services" in return for the township receiving its share of those net proceeds. Court determined that (i) unless otherwise provided by contract, R.C. Section 715.691 allows the contracting municipalities to use their share of those net proceeds for their own municipal purposes and (ii) since the contract between the board of the JEDZ and the township "is premised on the consideration of the township performing services it is already legally obligated to provide, the contract fails for want of consideration." *Jankowski v. Monclova-Maumee-Toledo Joint Economic Development Zone Board of Directors, 2010-Ohio-181 (Ohio App. 6th Dist.)*

City Council adopted new comprehensive zoning regulations for, and rezoned certain property to, a special or overlay district, and thereafter approved a final development special overlay plan for a certain area. Neighboring landowners appealed, but actions by City Council qualified as legislative action and, as such, were not reviewable under R.C. 2506.01 and the trial court lacked jurisdiction. *Shaheen v. Cuyahoga Falls City Council, 2010-Ohio-640 (Ohio App. 9th Dist.)*

A city, by ordinance, implemented tax increment financing (TIF) in a certain area of the city (district) to encourage development by declaring that any increase in the assessed value of property within that TIF district would be exempt from taxation and that instead owners in the TIF district are to make service payments in lieu of taxes (PILOTs), which are used to pay for infrastructure improvements for that TIF district. Dispute arises between a lessor and lessee of property in that TIF district as to who is to pay the PILOTs since the terms of the lease require the lessor to pay "general real estate taxes and assessments" and the lessee to pay "special assessments." The appellate court held that the lessor must pay the PILOTs and stated that "Ohio's TIF legislation clearly demonstrates that PILOTs are special assessments" and "special assessments are not limited to enactment under R.C. 727.01, et seq." *Chu Brothers Tulsa Partnership, PLL, v. The Sherwin-Williams Company, 2010-Ohio-858 (Ohio App. 12th Dist.)*

Person made a request of city under the Public Records Act for all daily public recordings for each and every day of the year for the years 1975 through 1995; claimed that he was an aggrieved party under R.C. Section 149.351(B) for purposes of bringing a civil action to recover a forfeiture of $1,000 for each record destroyed; claimed that there were 4,968 records destroyed between 1989 (no tapes were created before 1989) and 1995; and argued that the trial court should have granted a judgment in the amount of

$4,968,000. The appellate court held that an aggrieved party is any member of the public who makes a lawful public records request and is denied those records "regardless of the lack of purpose or 'blackness' of motive." The appellate court also defined the "public records" in this case to be the reel-to-reel tapes (which were recycled every 30 days) and not each voice entry or calendar day entry on the tapes and not any back-up tapes. It thereby calculated 84 violations (or a penalty of $84,000), although the appellate court remanded the matter "to the trial court for a jury trial on the factual issue of how many records were destroyed" based on that definition. *Timothy T. Rhodes v. The City of New Philadelphia, 2010-Ohio-1730 (Ohio App. 5th Dist.)*

R.C. Section 9.07(C)(1) authorizes a board of county commissioners to enter into a contract with an out-of-state jurisdiction to house out-of-state prisoners in a county correctional facility. In connection therewith, the board is required to determine the types of out-of-state prisoners that may be housed in that facility and notify the Department of Rehabilitation and Correction of its determination for review and comment. *2010 Op. Att'y General No. 2010-004*

A county has no authority to recoup from taxing authorities within the county any portion of the cost of printing or mailing tax bills. *2010 Op. Att'y General No. 2010-005*

A county may retain the services of a private attorney to assist the county prosecuting attorney in handling foreclosure proceedings under R.C. Sections 323.65 to 323.79, provided that the attorney is employed and compensated in the manner prescribed in R.C. Sections 305.14 and 305.17; the money paid to a private attorney for those services is an actual identified cost for purposes of R.C. Section 323.75(A) that is to be assessed in connection with those foreclosure proceedings. *2010 Op. Att'y General No. 2010-010*
