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FISCAL IMPACT STATEMENT

LS 6865 | **NOTE PREPARED:** Jan 20, 2006
BILL NUMBER: SB 260 | **BILL AMENDED:** Jan 19, 2006

SUBJECT: Various property tax issues.

FIRST AUTHOR: Sen. Kenley | **BILL STATUS:** CR Adopted - 1st House
FIRST SPONSOR:

FUNDS AFFECTED: X **GENERAL** | **IMPACT:** State & Local
X **DEDICATED**
FEDERAL

Summary of Legislation: (Amended) *Utility Appeals:* This bill adjusts the procedure for a public utility company to appeal the distributable property assessment of the Department of Local Government Finance (DLGF) to the Board of Tax Review.

Utility Tax Credit: It provides that a public utility that meets certain criteria is eligible for a property tax credit with respect to property taxes paid in 2006 if the DLGF determines that the AV of the distributable property reported in the public utility's original return was incorrect and was correctly reported as a lower amount in a subsequent amended return.

Attesting to Documents: The bill allows a designee of the commissioner of the DLGF to attest copies of certain documents used to prove an action, rule, or order of the DLGF.

Failure to Act on an Appeal: It allows a taxpayer that initiated an appeal to the DLGF of a political subdivision's budget, rate, and levy to seek judicial review if the DLGF fails to act on the appeal in a timely manner.

Amendments to Certified Statements: The bill allows the county auditor to amend assessed valuation (AV) information provided to the DLGF and political subdivisions that is used to set property tax rates.

DLGF Rules for Assessment: The bill provides that the DLGF rules for assessment of real property are not required to include instructions for determining depreciation or reproduction cost.

Expanding the Levy Shortfall Appeal: It allows a civil taxing unit to appeal for an excessive property tax levy to cover a shortfall caused by tax delinquencies.

Excessive Property Tax Levy for Population Growth: It allows a civil taxing unit to appeal for an excessive property tax levy if the unit has a rate of population growth that exceeds the average for the entire state and a per capita levy that is less than the average per capita levy of similar civil taxing units.

Maximum Levy Changes - Temporary Adjustments: It allows an increase in a civil taxing unit's maximum permissible levy to offset the effects of temporary adjustments in any preceding year after 2003.

The bill specifies the adjustments in tax levies that qualify as temporary adjustments for the purpose of determining a civil taxing unit's maximum levy for the ensuing year. The bill adds a requirement to include information regarding temporary adjustments that were made in the current year to the statements that must be filed with the county auditor before the first meeting of the county board of tax adjustment.

Deadline for Property Tax Related Filings: The bill changes the annual deadline for filing for various property tax benefits for individuals from May 10 to June 10. It specifies when returns, other documents, and property tax payments are considered to be received for purposes of property tax statutes containing filing or payment deadlines.

Class Action Suits Against the DLGF: The bill states requirements for maintaining a class action suit against the DLGF.

Reassessment of Sold Lots: The bill specifies when a lot or tract held for sale in the ordinary course of trade or business may be reassessed for property tax purposes.

Instructions for Sales Disclosure Forms: The bill provides that information regarding certain property tax benefits available to owners of single family residential property must be included in the instructions for completing the sales disclosure form used in transfers of real property interests.

Personal Property Tax Abatement Deduction: For depreciable personal property eligible for tax abatement and subject to the 30% minimum valuation limitation, the bill specifies the amount of AV used to compute the deduction.

Board of Tax Review: It provides that when a county auditor receives notice of a decision by the board of tax review in an appeal from a decision by a county property tax assessment board of appeals (PTBOA) or the DLGF, the county auditor (instead of the board) must distribute copies of the decision to taxing units for which the AV of the appealed items is at least 1% of the total gross certified assessed value of the taxing unit. The bill provides that in an appeal from a decision of a local assessing official or a PTBOA, the board of tax review may subpoena witnesses and documents. (Current law gives the board this power with respect to appeals from DLGF decisions.) The bill provides that if the board fails to render a decision in an appeal from an action of the DLGF, the entity that initiated the appeal has the option of waiting for a DLGF decision or requesting judicial review. The board or board judge may subpoena and examine witnesses and books or papers that are in the hands of any person as well as administer oaths.

Taxpayers Notifications: The bill provides that information concerning the change in the amount of a property taxpayer's liability distributable to each taxing unit that is provided by certain counties under a pilot program (and all counties beginning in 2008) need not be stated as a percentage.

Effective Date: (Amended) January 1, 2006 (RETROACTIVE); Upon passage; July 1, 2006.

Explanation of State Expenditures: (Revised) *Utility Appeals.* This bill adjusts the procedure for a public utility company to appeal the distributable property assessment of the Department of Local Government Finance (DLGF) to the Board of Tax Review (IBTR).

Under existing law, within ten days after a public utility company receives the notice of the DLGF's tentative assessment, the company may file with the DLGF its objections to the tentative assessment and demand that the DLGF hold a hearing on the tentative assessment. If the public utility does not file with the DLGF its objections within the time allowed, the tentative assessment is final and may not be appealed. A taxpayer may appeal a DLGF final assessment to the IBTR only if the taxpayer first objected to the tentative assessment.

The bill provides that (1) the taxpayer may request a preliminary conference (and not a hearing) with the DLGF within the 10 day period, (2) the DLGF may hold a conference at their option, and (3) the utility may appeal a final determination to the IBTR regardless of whether the taxpayer objected to the tentative assessment. These provisions could result in the DLGF conducting fewer formal appeals and in the Board of Review processing more appeals. The specific impact is indeterminable and will depend on the number and nature of objections and appeals that result after the provisions take effect relative to the number and nature that would occur under existing law. The DLGF and the Board of Review should be able to cover any additional costs given their existing resources.

Class Action Suit Against the DLGF. The bill provides that a class action suit against the DLGF may not be maintained in any court, including the Indiana tax court, on behalf of a person who has not complied with certain requirements before the certification of the class. This provision may result in fewer class action suits against the DLGF. The fiscal impact is not expected to be significant.

Failure to Act on an Appeal. The bill provides that a taxpayer who signed the statement filed to initiate an appeal of a county board of tax adjustment's action on a taxing unit's budget may appeal for judicial review if the DLGF fails to act on the appeal. The provision may result in more cases before the tax court which would increase administrative expenses for the court and decrease expenses for the DLGF.

Expanding the Levy Shortfall Appeal and Maximum Levy Changes. The state pays a 20% Property Tax Replacement Credit (PTRC) on qualifying fund levies that are attributable to property other than business personal property. Likewise, the state pays a 20% Homestead Credit on the net tax due (after PTRC) of the reassessment fund levies that are attributable to homesteads.

Subject to appropriation, if property tax levies rise or fall as a result of this bill as explained below, then the state's expense for PTRC and Homestead Credits could also change in a similar fashion. The amount of the potential change is not known and is dependent on local action. PTRC and Homestead Credits are paid from the Property Tax Replacement Fund (PTRF) which is annually supplemented by the state General Fund. Changes in PTRF expenditures would ultimately affect the General Fund.

It is estimated that the FY 2007 appropriation for PTRC and Homestead Credits will not be sufficient to fully fund the CY 2007 credits. As a result, the 60% school general fund PTRC, 20% real property PTRC, and the 20% Homestead Credit percentages will be proportionately reduced. A change in the levy under this proposal would have an effect on the amount by which the credit percentages are reduced.

The state impact for FY 2008 and all following years is indeterminable as it depends on local action and since PTRF appropriations for years after FY 2007 have not yet been made.

Deadline for Property Tax Related Filings: The bill changes the date (from May 10 to June 10) by which claims for deductions must be filed. This provisions will have no significant fiscal impact.

Attesting to Documents: Under current law, the DLGF's record is sufficient evidence in all courts or proceedings to prove an action, rule, or order if the copy is certified by the commissioner and attested to by the deputy commissioner. The DLGF no longer has a deputy commissioner. This bill would allow a designee of the DLGF Commissioner to attest to the record rather than the deputy.

DLGF Rules for Assessment: The bill eliminates the requirement that the DLGF's rules and instructions for determining the assessment of real property must include instructions for determining depreciation and the cost of reproducing improvements.

Real property is assessed on a market-like basis. The assessment rule (manual) requires that the assessor determine a market-related value. The means by which the value is determined is left up to the assessor. One accepted method has been to determine a value under the "cost less depreciation" method (the former assessment method) and then applying a sales factor for the neighborhood to approximate market value. The required instructions in the current rule govern this method. Costs for the manual for the 2003 reassessment are listed in the following table.

Appraisal Research Corporation contract to develop cost tables	$122,500
Consulting contract w/Joe Beres; developer of original tables in 1970's	25,000
International Association of Assessing Officers contract to review manual	50,000
Contract w/Avalon Group for technical writing and desktop publishing	50,000
Marshall and Swift Publications licensing fee for use of cost figures (4yr. license)	240,000
Printing of manual	50,000
Staff costs for DLGF staff	unknown
TOTAL	$537,500

Instructions for Sales Disclosure Forms: The DLGF must adjust the sales disclosure form to include information regarding certain property tax benefits available to owners of single family residential property. The DLGF will be able to accomplish this task with existing resources.

Board of Tax Review Decisions: It provides that when a county auditor receives notice of a decision by the board in an appeal from a decision by a county property tax assessment board of appeals (PTBOA) or the DLGF, the county auditor (instead of the board) must distribute copies of the decision to taxing units for which the AV of the appealed items is at least 1% of the total gross certified AV of the taxing unit. This provision will reduce expenditures for the DLGF.

<u>Explanation of State Revenues:</u> (Revised) *Utility Appeals:* Adjusting the appeal process could result in a change in the overall state AV. The State levies a small tax rate for State Fair and State Forestry. Any change in the AV base will change the property tax revenue for these two funds.

Reassessment of Sold Lots: The State levies a small tax rate for State Fair and State Forestry. Any delay in the addition of assessed value (AV) to the tax base will delay increases in property tax revenue for these two funds.

<u>Explanation of Local Expenditures:</u> (Revised) *Amendments to Certified Statements.* After the county auditor sends a certified statement to each political subdivision pertaining to property tax information and before the DLGF certifies its action to the political subdivision, the county auditor may amend the information concerning AV that was included in the earlier certified statement. The county auditor must send an amended certified statement to each political subdivision affected by the amendment and the DLGF. Before the county auditor makes an amendment, the county auditor must provide an opportunity for public comment on the proposed amendment at a public hearing. The county auditor must also give notice of the hearing and must also notify the county assessor. However, the county auditor is not required to hold a public hearing if the amendment is proposed to correct a mathematical error made in determining AVs, if the auditor is adding omitted property discovered after the certified statement was sent, or if the auditor determines that the amendment will not result in an increase in the tax rate. These provisions will have an impact on local administrative expenditures; however, the specific impact is indeterminable and will depend on the number and nature of amendments that county auditors make to certified statements.

Board of Tax Review Decisions: It provides that when a county auditor receives notice of a decision by the Board of Tax Review in an appeal from a decision by a PTBOA or the DLGF, the county auditor (instead of the board) must distribute copies of the decision to taxing units in certain circumstances. This provision will increase expenditures for counties.

Maximum Levy Changes - Temporary Adjustments: The bill adds an additional statement that the political subdivision must file with the county auditor before the first meeting of the county board of tax adjustment that pertains to revenue sources used to temporarily decrease the tax rate and levy. When the county auditor certifies the levy, rate, and budget to the DLGF, the auditor must include the above statement filed by the unit. This provision will increase record-keeping expenditures by a minimal amount.

Taxpayers Notifications: The bill provides that information concerning the change in the amount of a property taxpayer's liability distributable to each taxing unit that is provided by certain counties under a pilot program (and all counties beginning in 2008) need not be stated as a percentage. This provision will decrease administrative expenditures for the county treasurer by an indeterminable amount.

Deadline for Property Tax Related Filings: The bill changes the annual deadline for filing for various property tax benefits for individuals from May 10 to June 10. It specifies when returns, other documents, and property tax payments are considered to be received for purposes of property tax statutes containing filing or payment deadlines. This provisions should have a minimal fiscal impact.

<u>Explanation of Local Revenues:</u> (Revised) *Utility Tax Credit:* Under current law, a public utility must self-report the assessed value of its distributable property to the DLGF. The DLGF sends a notice of tentative assessment to the taxpayer based on the return and any changes made by the DLGF. The utility may object to the tentative assessment within 10 days of receiving the notice. The assessment becomes final if no objection is filed within the 10 day period. There are no provisions for a public utility company to file an amended return. The DLGF apportions the distributable property valuation among the taxing districts in which the utility has property.

Under this provision, the DLGF would accept the assessment listed on a water utility's amended 2005 payable 2006 return if (1) the return has already been filed, (2) the amended return is correct, and (3) the assessed value on the amended return is less that the original assessment.

The taxpayer would still be required to pay the full amount of the tax due on the original return in 2006, but would receive a credit for the overpayment in 2007. The county auditor would reduce certified assessed values in 2007 to increase the tax rate so that the credit will not cause a revenue shortfall for local units. This creates a shift in 2007 from the utility taxpayer to all taxpayers. However, the utility's over-assessment under current law caused a shift from all taxpayers to the water utility.

The credit amount was estimated based on assessed values provided by the taxpayer and 2005 tax rates. If the values are different or if the rates are significantly different in 2006, then the actual credit would deviate from this estimate. The total AV could be reduced by $31.6 M, from $70.7 M to $39.1 M. The assessment (and assessment reduction) is distributed to seven taxing districts, six in Allen County and one in Whitley County. The total credit is estimated at $650,000.

Expanding Levy Shortfall Appeal. Beginning with 2006 appeals, a civil taxing unit may request permission from the Local Government Tax Control Board to impose a levy that exceeds the maximum permissible levy if the unit experienced a property tax revenue shortfall because of one or more property tax delinquencies. This provision could result in some local units being able to levy additional taxes. The specific impact, however, is indeterminable.

Excessive Property Tax Levy for Population Growth: Under this provision civil taxing units would be permitted to appeal for an excessive property tax levy if (1) the unit's population is growing faster than the statewide population and (2) the unit's per capita levy is less than the average for similar units. If the DLGF determines that the available Census data is insufficient, then the taxing unit must submit information as required by the DLGF. The bill does not specify the amount of excessive levy that may be granted to qualifying units.

A taxing unit's maximum levy each year equals the previous year's actual levy multiplied by the six-year average growth in Indiana non-farm personal income. The growth factor (AVGQ) is 3.9% in 2006. The AVGQ is appealable to the DLGF if the growth in assessed value for a unit is at least 3% higher than the AVGQ. So, some very fast-growing taxing units may already qualify for relief through this mechanism.

The proposed levy appeal would affect those fast-growing taxing units that are not growing fast enough to trigger the AVGQ appeal. The appeal could also benefit growing taxing units that have lost some of their levy authority because they have not used it all in the past.

The amount of potential additional levies under this provision is unknown. Annual population counts or estimates would have to be made in order to measure population growth from year to year.

Background Information: The average per capita maximum levy for 2005 was $140 for counties (not including welfare funds), $46 for township units, $11 for township fire funds, and $349 for cities and towns. Population counts are not readily available for libraries or special taxing units. Libraries and special taxing units are many times co-terminus with another civil unit or group of units. In these cases, the library or special unit population may be easily attainable.

Maximum Levy Changes - Temporary Adjustments: Under current law, a taxing unit's maximum levy is computed by applying a growth factor to the previous year's actual controlled levy after adjusting for any temporary levy adjustments made in the previous year. Beginning with taxes paid in CY 2007, this bill would allow an adjustment to be made for reversing temporary adjustments made in any previous year after 2003. This provision could increase or reduce maximum levies for some local units. A change in maximum levies would most likely have a similar effect on actual levies.

The bill also clarifies that "temporary adjustment" means the use of (1) a balance in the levy excess fund, surplus operating balances, or local option income tax revenue to reduce the levy or (2) any other adjustment determined to be extraordinary by the DLGF.

Reassessment of Sold Lots: Under existing law, farmland is assessed at a lower rate ($880 per acre multiplied by a productivity factor) than the rate at which residential, commercial, or industrial property is assessed. If the land is transferred from agricultural land to a developer and is subdivided into lots, the land may not be assessed until the next change of title. Typically, the title is transferred to a residential, commercial, or industrial user, but it could be transferred to another developer. Current law also requires that the land would be re-assessed if it is re-zoned. It is possible under current law, that the developer could still own the land when it is re-zoned. A case was brought before the Tax Court. The Tax Court determined that the law was ambiguous and that the land should be reassessed when the land is re-zoned regardless of who owned it.

The proposal provides that in the case of land in a developer's inventory (whether it be the initial developer or not), the land should not be reassessed until the developer transfers title, regardless of whether the land has been re-zoned.

The impact of the bill will be to delay the addition of the land's AV as residential, commercial, or industrial land to the tax rolls, which will result in lower overall AV until the land is reassessed from agricultural to residential, commercial, or industrial. The delays would also delay a shift of the property tax burden from the owners of land that is assessed as agricultural to all taxpayers in the form of an increased tax rate.

Total local revenues, except for cumulative funds, would not be affected. The delay in increasing the AV will delay any increase in revenue that cumulative funds would experience because of the increase in AV that would be experienced when the land is reassessed from agricultural land to residential, commercial, or industrial. The delay would equal the product of the fund rate multiplied by the difference in AV resulting from the reassessment.

Personal Property Tax Abatement Deduction: Under current law, new manufacturing, research and development, and logistic equipment may qualify for property tax abatements. The abatement is equal to the property's AV multiplied by a percentage according to a schedule.

Under this provision, if the taxpayer is subject to the 30% minimum valuation floor, the property's AV used in the abatement calculation would equal (1) the new property's AV without regard to the assessment floor multiplied by (2) the ratio of the taxpayer's total AV with the floor divided by the taxpayer's total AV without regard to the assessment floor.

Example: A taxpayer's new property AV without regard to the 30% floor is $100,000. The total cost of all of the taxpayer's property in the taxing district is $1,000,000 and the total AV without regard to the assessment floor is $200,000. Under current law in this example, the taxpayer's total taxable AV would be $300,000 (because of the 30% floor). The AV of the new property used in the abatement calculation would be $100,000. According to the bill, the AV of the new property used in the abatement calculation would be $150,000 ($100,000 no floor AV X [$300,000 total floor AV / $200,000 total no floor AV]).

The value of abatements would increase for those taxpayers who are subject to the 30% valuation floor. The impact would depend on a combination of (1) the level of assessments in relation to the 30% floor for taxpayers with abatements and (2) the value of the abatements. No deference is given as to whether the assessed value (without the floor) of just the new property is at or below 30%.

An increase in the value of abatements would reduce total AV causing a shift of part of the property tax burden from the abated taxpayers to all taxpayers via an increased tax rate. Property tax revenues would be reduced for cumulative funds and other funds with fixed tax rates.

State Agencies Affected: DLGF, State Board of Tax Review, Tax Court, State Forestry, State Fair.

Local Agencies Affected: All.

Information Sources:

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