Fiscal Note & Local Impact Statement

127 th General Assembly of Ohio

Ohio Legislative Service Commission
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BILL: **S.B. 16** DATE: **April 17, 2007**

STATUS: **As Reported by Senate State & Local Govt. & Veterans Affairs** SPONSOR: **By Initiative**

LOCAL IMPACT STATEMENT REQUIRED: **Yes**

CONTENTS: **Sexually oriented businesses**

State Fiscal Highlights

STATE FUND	FY 2007*	FY 2008	FUTURE YEARS
General Revenue Fund			
Revenues	- 0 -	Potential minimal gain in court cost revenues; Potential losses from reduced personal income tax, sales tax, and corporation franchise tax	Potential minimal gain in court cost revenues; Potential losses from reduced personal income tax, sales tax, corporation franchise tax, and the commercial activity tax
Expenditures	- 0 -	- 0 -	- 0 -
Victims of Crime/Reparations Fund (Fund 402)			
Revenues	- 0 -	Potential minimal gain in court cost revenues	Potential minimal gain in court cost revenues
Expenditures	- 0 -	- 0 -	- 0 -

Note: The state fiscal year is July 1 through June 30. For example, FY 2007 is July 1, 2006 – June 30, 2007.
* For the purposes of this fiscal analysis, it is assumed that any of the bill's state fiscal effects would occur sometime after FY 2007.

- ***Court cost revenues.*** The bill may produce a minimal revenue gain to the state's GRF and the Victims of Crime/Reparations Fund (Fund 402) from increased local collection of state court costs, as individuals may be convicted of violating the bill's misdemeanor prohibitions.

- ***Reduction in state tax revenues.*** The bill may decrease the number of sexually oriented businesses, their sales and profits. Such an outcome would decrease state revenues from various tax sources, primarily the sales tax, the personal income tax, the commercial activity tax, and the corporation franchise tax. Under current law, revenues from these taxes are distributed in various proportions to the GRF. The extent of the potential GRF revenue loss is uncertain.

Local Fiscal Highlights

LOCAL GOVERNMENT	FY 2007	FY 2008	FUTURE YEARS
Counties, municipalities, and townships (criminal justice systems)			
Revenues	Potential gain in court cost and fine revenues, magnitude uncertain	Potential gain in court cost and fine revenues, magnitude uncertain	Potential gain in court cost and fine revenues, magnitude uncertain
Expenditures	Potential increase in criminal justice system costs, magnitude uncertain	Potential increase in criminal justice system costs, magnitude uncertain	Potential increase in criminal justice system costs, magnitude uncertain
Counties, municipalities, and school districts (tax revenues)			
Revenues	Potential losses from reduced distributions to various local government funds from state taxes, magnitude uncertain	Potential losses from reduced distributions to various local government funds from state taxes, magnitude uncertain	Potential losses from reduced distributions to various local government funds from state taxes, magnitude uncertain
Expenditures	- 0 -	- 0 -	- 0 -

Note: For most local governments, the fiscal year is the calendar year. The school district fiscal year is July 1 through June 30.

- ***Local court cost and fine revenues.*** By creating the possibility for new criminal cases, the bill also creates the potential for additional court cost and fine revenues to be collected by local criminal justice systems statewide. The magnitude of the bill's potential relative to increasing local criminal justice system revenues is uncertain.

- ***Local criminal justice system expenditures.*** Theoretically, the expenditures of certain local criminal justice systems may increase, reflecting the additional costs to investigate, prosecute, adjudicate, and sanction individuals who violate the bill's regulations and prohibitions. The magnitude of those potential costs on any given local jurisdiction is likely to be a function of the number of affected businesses and the degree to which those businesses violate the bill's regulations and prohibitions. As of this writing, the combination of those factors is rather problematic to determine.

- ***Tax revenues.*** The bill will potentially decrease revenues from distributions of various state taxes to local governments. The Local Government Revenue Assistance Fund receives 0.6% of revenues from the sales, personal income, and corporation franchise taxes. The Local Government Fund receives 4.2% of revenues from the sales, personal income, and corporation franchise taxes. The Library and Local Government Fund receives 5.7% of revenues from the personal income tax. The School District Tangible Property Tax Replacement Fund and the Local Government Tangible Property Tax Replacement Fund receive distributions from the commercial activity tax. The bill may also reduce local revenues from municipal income and profits taxes. These losses will depend on the location of businesses affected by the bill.

Detailed Fiscal Analysis

The bill

The bill, proposed by initiative,[1] contains several prohibitions relating to sexually oriented businesses. Specifically, the bill:

- Prohibits a sexually oriented business from remaining open between midnight and 6 a.m., unless the business is covered by a liquor permit that authorizes operation during those hours, in which case it may remain open provided that it does not conduct, offer, or allow any sexually oriented entertainment activity during those hours.
- Prohibits employees of the business, while on the premises of the business and in a state of nudity or seminudity, from knowingly: (a) appearing in the view of a patron, unless at least six feet away and on a stage at least two feet off the floor, (b) touching any patron or their clothing, or (c) touching any other person who is nude or seminude while in the view of any patron.
- Prohibits any patron of a sexually oriented business from knowingly touching any employee of the business who is nude or seminude.

The bill defines "sexually oriented business" as an adult bookstore or adult video store, an adult cabaret,[2] an adult motion picture theater, a sexual device shop, or a sexual encounter center. Under the bill, a violation of any of the above-noted prohibitions is a misdemeanor of the first degree, which is punishable by a fine of up to $1,000 and/or a jail stay of not more than six months.

[1] This bill was proposed by initiative. An initiative petition proposing a law must contain signatures of electors equal to 3% of the total votes cast in the last election for Governor. The petition must be filed with the Secretary of State at least ten days before a session of the General Assembly commences. If the General Assembly fails to act on the proposal within four months, fails to pass the proposal, or passes an amended version of the proposal, the proponents have 90 days to file a supplementary petition with the Secretary of State demanding that it be put on the ballot. The supplementary petition must contain additional signatures amounting to 3% of the total votes cast in the last election for governor. The proponents may include in the supplementary petition any amendments that were incorporated into the proposal by either or both houses of the General Assembly. The Secretary of State must submit the proposal to the electors at the next regular or general election. If the voters approve the proposal, it takes effect 30 days after the election and any different version that was passed by the General Assembly is invalidated. If the voters reject the proposal, any different version that was passed by the General Assembly becomes effective. The Governor may not veto a law that was proposed by petition and approved by the electors.

[2] An "adult cabaret" is a nightclub, bar, juice bar, restaurant, bottle club, or other commercial establishment, regardless of whether alcoholic beverages are served, that regularly features persons who appear in a state of nudity or seminudity or live performances that are characterized by the exposure of certain areas of the human anatomy.

Compliance versus noncompliance

In response to the bill, the owners, operators, and employees of sexually oriented businesses would presumably take one of two courses of action as follows:

(1) ***Compliance*.** Owners, operators, and employees of sexually oriented businesses could choose to comply fully with the bill's regulations. Arguably, compliance in many situations would negatively impact such businesses, specifically by limiting the nature and hours of operation. As such, it seems probable that some businesses may cease to exist, thus affecting the state and local tax base.

(2) ***Noncompliance*.** Owners, operators, and employees of sexually oriented businesses will opt to violate the bill's regulations and prohibitions. In this case, the violator(s) would presumably be arrested, successfully prosecuted, and sanctioned. The impact of noncompliance on any given local criminal justice system will be a function of the number of affected businesses and the degree to which those businesses violate the bill's regulations and prohibitions.

At the time of this writing, it is rather problematic to predict the relative levels of compliance and noncompliance with the bill's regulations and prohibitions in any given local jurisdiction.

State fiscal effects

Court cost revenues

The bill may produce a revenue gain to the state's GRF and the Victims of Crime/Reparations Fund (Fund 402) from increased local collection of state court costs, as individuals may be convicted of violating the bill's misdemeanor prohibitions. For a misdemeanor offense, the state court cost totals $24, with $15 of that amount being credited to the GRF and the remaining $9 being credited to Fund 402. As of this writing, it does not appear that the potential gain in state court revenues would exceed minimal. For the purposes of this fiscal analysis, a minimal revenue gain means an estimated increase of less than $100,000 per year for either state fund.

Tax revenues

The bill may decrease the number of sexually oriented businesses in the state. For businesses that remain open, the bill potentially decreases sales and profits in the industry. Reductions in employment, sales, and profits would then decrease state revenues from various tax sources, primarily the sales tax, the personal income tax, the commercial activity tax, and the corporation franchise tax (CFT). Under current law, revenues from these taxes are distributed in various proportions to the GRF. As no reliable data on sales and profits of the sexually oriented industry is readily available to LSC fiscal staff, the magnitude of the potential loss in state revenues is, as of this writing, rather problematic to determine.

Local fiscal effects

Local criminal justice system expenditures

Presumably, violator(s) of the bill's regulations and prohibitions will be arrested, successfully prosecuted, and sanctioned. The fiscal effect of that outcome is theoretically that the affected local criminal justice system's expenditures increase, reflecting the additional costs to investigate, prosecute, adjudicate, and sanction such offenders. The magnitude of those potential costs on any given local jurisdiction is likely to be a function of the number of affected businesses and the degree to which those businesses violate the bill's regulations and prohibitions. As of this writing, the combination of those factors is rather problematic to determine. Thus, whether those potential costs for certain local criminal justice systems could exceed minimal is uncertain. For the purposes of this fiscal analysis, a minimal expenditure increase means an estimated annual cost of no more than $5,000 for any affected local criminal justice system.

Local court cost and fine revenues

By creating the possibility for new criminal cases, the bill also creates the potential for additional court cost and fine revenues to be collected by local criminal justice systems statewide. As noted, the magnitude of the bill's potential relative to increasing local criminal justice system expenditures is uncertain. Similarly, the potential related gain in court cost and fine revenues is uncertain. This means that whether that potential gain in revenues could exceed minimal is uncertain as well. For the purposes of this fiscal analysis, a minimal revenue gain means an estimated annual increase of no more than $5,000 for any affected local jurisdiction.

Local tax revenues

Revenue from the state's corporate activity tax (CAT) is credited to the CAT Receipts Fund in the state treasury for distribution to the GRF, the School District Tangible Property Tax Replacement Fund (SDRF), and the Local Government Tangible Property Tax Replacement Fund (LGRF). Amended Substitute House Bill 66 of the 126th General Assembly created the SDRF and the LGRF, and distributions to the two funds were to replace moneys lost due to the elimination of the tax on most tangible personal property. For the FY 2008-2009 biennium, receipts from the CAT are allocated only to the SDRF and LGRF, so any decrease in CAT receipts reduces revenue to these funds.

Under current law, revenue from the individual income tax is distributed to the GRF (89.5%), the Library and Local Government Support Fund (5.7%), the Local Government Fund (4.2%), and the Local Government Revenue Assistance Fund (0.6%). Revenue from the sales tax is distributed to the GRF (95.2%), the LGF (4.2%), and the LGRAF (0.6%). If the bill negatively impacts sexually oriented businesses, then there is presumably some reduction in moneys that might otherwise have been distributed to local governments.

No meaningful revenue loss to local governments will occur from distribution of receipts from the corporate franchise tax (CFT). Revenue from the CFT is distributed to the GRF (95.2%), the LGF (4.2%), and the LGRAF (0.6%). However, the previously noted Am. Sub. H.B. 66 eliminated over five years the CFT for nonfinancial corporations. In FYs 2008 and 2009, nonfinancial corporations will pay 40% and 20%, respectively, of their full tax liability. The tax is eliminated in FY 2010.

The bill also potentially creates revenue loss from reduced receipts from the permissive county and transit authority sales taxes, and the municipal income and profit taxes. Those local revenue losses will depend on the location of the sexually oriented businesses.

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