Ohio Legislative Service Commission

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Fiscal Note & Local Impact Statement

Bill: Sub. S.B. 327 of the 129th G.A.

Date: December 5, 2012

Status: As Reported by Senate Ways & Means & Economic Development

Sponsor: Sens. Beagle and Tavares

Local Impact Statement Procedure Required: Yes

Contents: Increases amounts of tax credits available for the Ohio New Markets Tax Credit Program

State Fiscal Highlights

STATE FUND	FY 2013	FY 2014	FUTURE YEARS
General Revenue Fund			
Revenues	- 0 -	Potential loss	Potential loss of up to $40 million
Expenditures	- 0 -	- 0 -	- 0 -
New Markets Tax Credit Operating Fund (Fund 5JR0)			
Revenues	Potential gain	Potential gain	Potential gain
Expenditures	- 0 -	- 0 -	- 0 -

Note: The state fiscal year is July 1 through June 30. For example, FY 2010 is July 1, 2009 – June 30, 2010.

- The bill replaces the existing New Markets Tax Credit Program with two separate programs: the New Markets Revitalization Tax Credit Program and the New Markets Expansion Tax Credit Program.
- The bill increases the combined yearly maximum in credits that could be claimed to $50 million, up from $10 million in current law. Of the $50 million, it specifies that up to $15 million in tax credits may be claimed under the New Markets Revitalization Tax Credit Program, and up to $35 million may be claimed under the New Markets Expansion Tax Credit Program.
- The bill increases the maximum allowable tax credit per taxpayer for the revitalization program to $1.56 million, and eliminates the existing tax credit cap of $1 million per taxpayer for the expansion program.
- The New Markets Tax Credits reduce revenues from the corporate franchise tax, the domestic insurance tax, and the foreign insurance tax. Revenues from those taxes are deposited in the GRF.

- The state GRF would bear the entire revenue loss due to the Local Government Fund (LGF) and the Public Library Fund (PLF) "freeze" in this biennium. Beginning in FY 2014, any reduction to GRF tax receipts would also reduce the amount distributed to the LGF and PLF.
- The New Markets Tax Credit Operating Fund would receive an increase in revenue from a $5,000 fee that accompanies applications for the credits. The increase would come from both an increase in the current fee amount and from a likely increase in the number of applications received.

Local Fiscal Highlights

LOCAL GOVERNMENT	FY 2012	FY 2013	FUTURE YEARS
Counties, municipalities, townships, and school districts			
Revenues	- 0 -	- 0 -	Potential loss
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.

- The bill decreases revenue from the corporate franchise tax and the insurance taxes. Receipts from those taxes are deposited in the GRF.
- A share of GRF tax revenues is distributed under permanent law to the LGF and PLF. In this biennium, the state GRF would bear the entire revenue loss due to the LGF and PLF "freeze." Beginning in FY 2014, any reduction to GRF tax receipts would also reduce the amount distributed to the LGF and PLF.

Detailed Fiscal Analysis

Ohio New Markets Tax Credit

Current law (enacted by H.B. 1, 128th General Assembly) authorizes up to $10 million of tax credits annually for insurance companies and financial institutions for purchasing and holding securities issued by Community Development Entities (CDEs)[1] that finance investments in qualified low-income community businesses in Ohio. The nonrefundable Ohio New Markets Tax Credit (NMTC) applies against the corporate franchise tax, the domestic insurance tax, and the foreign insurance tax. It is limited to $1 million per qualifying business (39% of qualified Ohio investments of up to $2,564,000). If the amount of credit exceeds the tax otherwise due, the taxpayer may carry forward the excess for up to four of the ensuing years. Existing federal law provides for a New Markets income tax credit for investments at original issue in vehicles associated with providing investment capital for low-income communities. The Ohio New Markets Tax Credit is 39% of the portion of those investments that relates to projects in Ohio. (Qualified investments for the Ohio credits must also have qualified for the federal income tax credit). H.B. 1 specified that no Ohio credit could be claimed during the first two years so FY 2012 is the first year the initial credits under this program could be claimed. Specifically, 7% of the cost of investment could be claimed in 2012, and 8% of the cost of investment claimed in each of the following four years (for a total of 39%).

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The bill makes various changes to the existing NMTC Program. Details of the changes are provided in the LSC bill analysis. They include modifications to the application of tax credits, certain requirements for qualified CDEs, qualified equity investments, the application process, and credits recapture for noncompliance with the law.

The bill divides the existing NMTC Program into two separate programs: the New Markets Revitalization Tax Credit (NMRTC) Program with a total annual credit cap of $15 million, and the New Markets Expansion Tax Credit (NMETC) Program with a total annual credit cap of $35 million. Thus, the bill raises the combined yearly maximum in credits that could be claimed to $50 million, up from $10 million per year.

Qualified investments of $128 million per year in the two programs would be needed for taxpayers to claim all available tax credits, up from less than $26 million in current law. The tax credits remain nonrefundable, and are applied against the same taxes as in existing law.

[1] CDEs are certified by the U.S. Secretary of the Treasury.

The bill provides separate standards and procedures for each new program. For example, the bill increases the maximum NMRTC per taxpayer to $1.56 million (up from $1.0 million), or a maximum allowable qualified equity investment of $4 million. The bill does not specify a per investor tax credit limit for the NMETC, though the amount of qualified investments by an investor in a single CDE is limited to $10 million.

Current law requires investors to claim the tax credits over a seven-year period. No credits are to be applied in the first two years, and 7% of qualified investments claimed in the third year, and amounts equal to 8% of qualified investments in each of the remaining four years. The bill accelerates the receipt of credits for the NMRTC and permits 5% of the cost of qualified investments to qualify for tax credits in the first three years of the program (FYs 2010, 2011, and 2012) and 6% of the cost of qualified investments in the following four fiscal years (2013, 2014, 2015, and 2016). Existing law applies for qualified investments under the NMETC Program.

The increase in the New Markets Tax Credit Program cap potentially decreases receipts from the corporate franchise tax, and the domestic and foreign insurance premium taxes by up to $40 million per year. Revenues from those taxes are deposited in the GRF. Both the GRF revenue loss by tax source and the yearly revenue decrease from the credits are uncertain, as they are dependent on applications, approval, and issuance of such credits. This fiscal note assumes revenue losses from the bill may start in FY 2014.

Under permanent law, a portion of GRF tax receipts are subsequently transferred to the LGF and PLF. However, Am. Sub. H.B. 153 of the 129th General Assembly, the operating budget act for FYs 2012 and 2013, temporarily provides for transfers of predetermined amounts to the LGF and PLF.[2] Thus, any decrease in those tax receipts during the biennium will affect the GRF only. Beginning in FY 2014, transfers to the LGF and the PLF will resume based on a fixed percentage, but the applicable percentage is not yet known. The Tax Commissioner will determine, by July 5, 2013, the ratio of FY 2013 transfers to the respective funds to total FY 2013 GRF tax revenues.[3] Subsequent transfers to the LGF and PLF will be based on those respective ratios.[4]

Foreign insurance retaliatory tax

In addition to its "regular" insurance premium tax in Ohio, a foreign insurance company may be subject to a "retaliatory" tax, which is levied on insurance companies organized in a state whose insurance tax rate as charged against Ohio insurance companies exceeds the tax rate charged in Ohio against that other state's companies. The rate of the retaliatory tax is the difference between that state's and Ohio's insurance tax rate. The bill provides that a reduction in the amount of a foreign insurance

[2] Section 757.10 of Am. Sub. H.B. 153 of the 129th General Assembly.

[3] R.C. 131.51.

[4] Though the GRF local funds split is not yet known, yearly combined losses to the LGF and the PLF may be higher than $1 million, based on the potential annual GRF revenue loss.

company's insurance taxes as the result of the company claiming the Ohio New Markets tax credit does not increase that company's retaliatory tax liability. This provision may make the program more attractive to insurance companies from certain states.

Certification of qualifying businesses

Taxpayers qualify for the New Markets tax credit by purchasing and holding securities issued by CDEs. The bill requires that, before a qualified taxpayer may claim an Ohio credit, the Director of Development certifies that the qualified CDE's equity investments are qualified equity investments. The bill prescribes the application process, including the payment of a nonrefundable fee of $5,000 payable to the Department of Development. Payment of those fees will increase revenue to Fund 5JR0, the New Markets Tax Credit Operating Fund.

Credit claw back

Current law specifies conditions under which a taxpayer is required to repay the credit. If any amount of the federal tax credit is repaid, or if the Director of Development determines that an investment for which the Ohio credit is claimed is not a qualified equity investment, all or a portion of the credit received on account of that investment must be repaid by the taxpayer. The bill adds certain other requirements for the potential claw back of credits. The bill requires the Director of Development to give a taxpayer that does not comply with qualified CDE requirements written notice of its noncompliance, and allow the taxpayer six months to resolve such noncompliance before the Director takes formal action to recapture any or all claimed credit.

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