

Fiscal Note & Local Impact Statement

123rd General Assembly of Ohio

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BILL: **Sub. H.B. 589** DATE: **May 24, 2000**

STATUS: **As Enacted – Effective October 17, 2000** SPONSOR: **Rep. Hoops**

LOCAL IMPACT STATEMENT REQUIRED: **Yes**

CONTENTS: **Requires public utilities to pay only the undisputed portion of property taxes if the utility disputes the Tax Commissioner's valuation and provides for notification of disputes to be given to county auditors and affected taxing districts. Also extends the enterprise zone law to all electric generation facilities**

State Fiscal Highlights

STATE FUND	FY 2001	FY 2002	FUTURE YEARS
General Revenue Fund			
Revenues	- 0 -	- 0 -	- 0 -
Expenditures	Several million dollars to several tens of millions of dollars increase	Several million dollars to several tens of millions of dollars increase	Several million dollars to several tens of millions of dollars increase

Note: The state fiscal year is July 1 through June 30. For example, FY 2001 is July 1, 2000 - June 30, 2001.

- Department of Taxation would experience an administrative cost increase.
- General Revenue Fund (GRF) expenditures for state basic aid will increase between several millions of dollars to several tens of millions of dollars, contingent on the number of assessments appealed, size of disputed taxable value, school district type, and any recoupments that occur.
- According to the Board of Tax Appeals, about 99 appeals cases have been heard regarding public utility personal tangible property. Approximately 75 percent (74 cases) of the cases have been filed since 1995, with half of these filed since 1997 (37 cases). This data shows the growing trend of public utility tangible personal property cases being heard by the Board of Tax Appeals.
- Allowing electric generation facilities to qualify for tax abatements under the enterprise zone law may result in a potential General Revenue Fund expenditure increase from exempted properties reducing the taxable value in school districts, which, in turn, would increase state expenditures in state basic aid to education.



Local Fiscal Highlights

LOCAL GOVERNMENT	FY 2000	FY 2001	FUTURE YEARS
School Districts, Municipalities, Townships, Counties			
Revenues	- 0 -	Revenue Loss, contingent on number of appealed cases	Revenue Loss, contingent on number of appealed cases, with possibility of a portion being made up in later years.
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.

- For non-school taxing districts, the revenue impact is virtually revenue neutral in the long run. However, in the short run, major swings in revenue may occur. Impacts would be greatest for taxing districts containing a major utility installation.
- Only the undisputed taxable value would be certified for state basic aid purposes, allowing school districts to receive additional state revenue during the case's intervening court years. Any overpayment of state basic aid would be recouped at the standard state interest rate.
- In most cases, a school district's tax rate on personal tangible property is greater than 23 mills plus interest. But there are 20 school districts that levied less than 25 mills in 1998 on tangible personal property. For these districts, it is possible that property tax payment made by the public utility would not cover the recoupment and the accrued interest (assuming up to 2 mills of interest) and the district would need to cover the additional owed money.
- Contingent on the properties that are granted an enterprise zone exemption, school districts and other local governments may lose property tax revenue. School districts will potentially have a decrease in district valuation, which will then increase their state basic aid. There is a potential loss of revenue to some school districts and other local taxing jurisdictions and a potential gain to others.

Detailed Fiscal Analysis

Deferral of Payment of Disputed Portion of Property Tax Assessment

For public utility personal property, under current law, the public utility files an annual report with the Tax Commissioner, who then assesses and apportions the value of property amongst the various tax districts where the property is located. The public utility must then pay the amount of public utility personal property tax liability indicated by the Tax Commissioner. If it is later determined by the Board of Tax Appeals or court that the Tax Commissioner’s assessment was too high, the utility is entitled to a refund plus interest of the overpayment, which comes directly from the local taxing districts.

The bill permits public utilities to pay only the undisputed portion of public utility personal property taxes, with the disputed portion payable after the dispute is finally resolved, plus interest. The amount of tax payable depends on that part of the assessment to which the utility objects. This is summarized in the below table:

<i>Public Utility Objects to:</i>			<u>Undisputed Taxes Due</u>
<u>Taxable Value Assessed</u>	<u>Taxable Value Apportionment</u>	<u>Assessment Percentage</u>	
Ä			Utility must pay tax only on the part of the taxable value to which the utility does not object.
	Ä		Utility must pay only on the part of the apportioned taxable value to which it does not object.*
		Ä	Utility must pay tax based on the assessment used by the Tax Commissioner

**If the utility apportioned taxable value to a taxing district that the Tax Commissioner did not apportion taxable value to, the utility must pay tax on that part of its taxable value.*

Regardless of the basis for a public utility’s objections, some portion of the tax must be paid. Taxable value reductions are limited to only what the public utility specifies. Final rulings cannot order a greater reduction than what the utility seeks.

The bill also incorporates only the undisputed portion of tangible personal property taxable value into the tax certification list used to determine state basic aid calculations to school districts. If, through the court’s determination, the school district receives property tax monies from the public utility’s disputed portion, then there is a recoupment, plus interest, of the state basic aid overpayment. This recoupment comes first from the owed tax liability to the school district and any additional recoupment required would either be collected from the school district by the auditor or come from the next payment. The recoupment is payable to the state GRF.

Fiscal Impact

The bill’s fiscal impact is an upfront revenue loss to taxing districts, which may or may not be paid by the utility at a later date, contingent on the dispute rulings. Instead of receiving the public utility personal property tax revenue, then refunding the amount due plus interest at a later date, taxing districts would only receive the undisputed portion of tax liability. Any portion of the disputed assessment that is paid at

a later date is also paid with interest. Utility cases can take six years or more to resolve if the case is appealed to the Supreme Court.

According to the [Board of Tax Appeals](#), about 99 appeals cases have been heard regarding public utility personal tangible property. Approximately 75 percent (74 cases) of the cases have been filed since 1995, with half of these filed since 1997 (37 cases). This data shows the growing trend of public utility tangible personal property cases being heard by the Board of Tax Appeals.

Non-School Taxing Districts

Non-school taxing districts would experience a major revenue swing in the short run, contingent on the number of disputed cases and final rulings of appealed cases. In the long run, though, the bill is virtually revenue neutral for non school districts. Taxing districts with major utility installations would be significantly affected. Effects for other districts would be moderate.

School Districts

School districts would receive only their portion of the undisputed personal tangible property tax revenue instead of receiving the full payment and possibly having to make refunds at a later date. Currently basic aid payments are based on the total assessed value of property. Under such circumstances, if the courts were to uphold any of the disputed taxable value, then school districts would have lost revenue from state basic aid payments due to appearing “wealthier” in the formula during the intervening years. The bill addresses this issue by using the undisputed taxable value for property tax certification in determining state basic aid. Consequently, school districts will receive higher basic aid payments in the intervening years, but may have to refund monies to the state if the utilities have to pay taxes on any part of the disputed value.

The following table shows the state’s school districts with at least 27 percent of valuation in public utility tangible personal property (total or per pupil).

School Districts with More than 27% of Taxable Value from Public Utility Tangible Personal Property							
County	School District	Total Public Utility Tangible Personal Property		Per Pupil Public Utility Tangible Personal Property		Public Utility as a Percent of Total	
		Taxes	Taxable Value	Taxes	Taxable Value	Taxes	Valuation
CLERMONT	NEW RICHMOND EVSD	\$16,518,671	\$460,120,972	\$5,976	\$165,553	78.1%	69.9%
JEFFERSON	EDISON LSD	\$7,522,757	\$247,382,291	\$2,763	\$86,337	67.6%	62.4%
GALLIA	GALLIA COUNTY LSD	\$5,852,992	\$276,418,042	\$2,017	\$91,702	66.4%	66.4%
WASHINGTON	FORT FRYE LSD	\$2,877,247	\$80,173,520	\$2,433	\$65,222	63.7%	53.8%
WASHINGTON	WOLF CREEK LSD	\$1,952,193	\$64,893,420	\$2,818	\$83,615	63.6%	57.7%
OTTAWA	BENTON-CARROLL-SALEM LSD	\$8,623,876	\$314,100,080	\$4,205	\$134,648	62.8%	56.6%
LAKE	PERRY LSD	\$18,521,165	\$552,019,582	\$9,328	\$204,113	60.3%	50.3%
ADAMS	OHIO VALLEY LSD	\$8,527,909	\$348,714,270	\$1,624	\$61,288	59.4%	54.5%
JEFFERSON	BUCKEYE LSD	\$4,197,738	\$175,117,870	\$1,601	\$55,214	54.1%	49.6%
COSHOCTON	RIVER VIEW LSD	\$5,605,153	\$219,680,156	\$2,050	\$65,074	53.7%	47.8%
BELMONT	SHADYSIDE LSD	\$1,360,199	\$43,995,680	\$1,562	\$45,460	49.4%	41.1%
WARREN	CARLISLE LSD	\$2,390,370	\$52,759,155	\$1,374	\$26,902	42.9%	31.6%
FAIRFIELD	BERNE-UNION LSD	\$977,069	\$24,097,801	\$982	\$21,402	42.0%	27.8%
HAMILTON	THREE RIVERS LSD	\$4,656,979	\$159,117,840	\$2,072	\$52,885	40.4%	34.1%
MEIGS	SOUTHERN LSD	\$624,673	\$24,548,090	\$765	\$28,328	39.9%	34.9%
NOBLE	NOBLE LSD	\$855,126	\$26,947,670	\$659	\$19,567	38.9%	33.7%

School Districts with More than 27% of Taxable Value from Public Utility Tangible Personal Property							
		Total Public Utility Tangible Personal Property		Per Pupil Public Utility Tangible Personal Property		Public Utility as a Percent of Total	
County	School District	Taxes	Taxable Value	Taxes	Taxable Value	Taxes	Valuation
RICHLAND	LUCAS LSD	\$695,878	\$14,645,180	\$1,044	\$20,795	38.7%	31.6%
PIKE	SCIOTO VALLEY LSD	\$683,253	\$28,894,310	\$413	\$14,800	38.6%	35.9%
MAHONING	LOWELLVILLE LSD	\$387,656	\$9,049,030	\$815	\$14,050	35.0%	25.5%
BUTLER	EDGEWOOD CSD	\$2,868,181	\$136,189,955	\$936	\$28,537	33.8%	27.7%
ASHLAND	HILLSDALE LSD	\$850,406	\$23,236,637	\$708	\$16,210	31.2%	22.6%
HANCOCK	ARCADIA LSD	\$543,441	\$17,704,935	\$884	\$24,597	30.6%	25.6%
ATHENS	ALEXANDER LSD	\$883,916	\$32,739,354	\$513	\$13,859	30.4%	22.0%
PICKAWAY	WESTFALL LSD	\$1,198,568	\$34,439,171	\$687	\$17,885	29.3%	24.9%
SHELBY	FAIRLAWN LSD	\$275,466	\$8,825,850	\$548	\$16,131	29.1%	25.6%
SCIOTO	BLOOM/VERNON LSD	\$233,250	\$10,935,280	\$212	\$8,582	28.7%	26.6%
DEFIANCE	NORTHEASTERN LSD	\$1,196,453	\$42,320,095	\$979	\$22,143	27.4%	22.5%
JACKSON	OAK HILL UNION LSD	\$396,354	\$26,519,238	\$294	\$13,007	27.3%	27.0%
WILLIAMS	STRYKER LSD	\$369,976	\$15,091,790	\$618	\$14,721	27.0%	18.2%
PERRY	CROOKSVILLE EVSD	\$245,872	\$11,891,277	\$221	\$7,660	27.0%	22.6%

Data concerning settlement cases is not readily available, but LBO has information regarding the Texas Eastern Transmission Corporation (TETCO) reductions in taxable value. In this case, the final ruling reduced taxable values in 20 counties between 17 percent and 35 percent for the tax years 1991 through 1996. School districts were required to refund approximately \$12 million, of which the state picked up \$7.4 million (due to section 3317.026 of the *Ohio Revised Code*, which provides for a recalculation of state basic aid to certain school districts under such circumstances). Under this bill, all the affected school districts would have been eligible for additional state basic aid by using the lower undisputed taxable values in the formula. If the final rulings exactly equal what the utility disputed, then all affected school districts would have received in total approximately \$1 million in additional state basic aid (23 mills times disputed taxable value) each year.

The actual amount of taxable value disputed would more than likely be somewhat higher than the court's final ruling. In this case, the public utility would have tax liability due on the difference between what they disputed and the court's final ruling. The bill would require school districts to refund to the state GRF the amount of overpayment of state basic aid, plus interest, or 23 mills times the difference between the public utility's assessment and the court's assessment. The recoupment would first come out of the property tax payment made by the public utility to the school district. Any additional money needed to be refunded to the state would then either be collected by the county auditor from the school district or be deducted from the next tax payment to the school district by the public utility.

In most cases, a school district's tax rate on personal tangible property is greater than 23 mills plus interest. But there are 20 school districts that levied less than 25 mills in 1998 on tangible personal property. For these districts, it is possible that a property tax payment made by the public utility would not cover the recoupment and the accrued interest (assuming up to 2 mills of interest) and the district would need to cover the additional owed money.

Based on current law, the bill's impact on school districts is not revenue neutral in the long run. Recent court cases that the public utilities have won have shown the districts not refunding all the disputed revenue. This is mostly due to the public relations nightmare a big firm would experience in extracting the

full refund from local governments and school districts. The long run impact to other tax districts is virtually revenue-neutral.

Extension of Enterprise Zone Law to All Electric Generation Facilities

The enterprise zone program allows local governments (counties or municipalities) to grant tax abatements to industrial enterprises in order to entice them to locate or expand the facilities within the locally established enterprise zone. Tax abatements can last for up to 10 years. Agreements may abate taxes on up to 75 percent of the value of new investment (in either real or tangible property) located in a municipality; they may abate taxes on up to 60 percent of the value of new investment located in an unincorporated area. Abatements may be greater with the approval of the local school district. HB 283 of the 123rd General Assembly extended the enterprise zone program until June 20, 2004. (See analysis of tax changes for [HB 283](#).) HB 27 expanded the program to include peak-load generation facilities. (See fiscal note for [HB 27](#).) This bill further expands the program to include all electric generation facilities.

The impact of the program on local governments depends on the likelihood that the program succeeds in getting new facilities to locate in the enterprise zone versus the likelihood that the facilities would have located in the area anyways, absent the agreement. To the extent that an enterprise zone is instrumental in getting a facility to locate in the locality, the provision will result in a gain of property tax revenue to the local governments. If the generation facility had located there anyway, the abatement would result in a tax loss.

With substantial economic growth over the last half of the decade, electric reserve margins are dwindling, so that it is highly likely that new generation facilities will be constructed in the near future. However, given the deregulation of the electric power industry in Ohio (SB 3 of the 123rd General Assembly) and in surrounding states, it is by no mean certain that such facilities would be located in Ohio. It is likely that some facilities would be built in Ohio without the enticement; whereas others will only be built here with the enterprise zone tax breaks. Therefore, this provision will result in a revenue gain to some local governments and a revenue loss to others. It is not clear what the net impact will be.

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