# *Fiscal Note & Local Impact Statement*

*123 rd General Assembly of Ohio*

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BILL: **Am. Sub. S.B. 287**

DATE: **December 7, 2000**

STATUS: **As Enacted – Effective December 21, 2000, Certain Provisions Effective January 1, 2001**

SPONSOR: **Sen. Blessing**

LOCAL IMPACT STATEMENT REQUIRED: **Yes**

CONTENTS: **Reduces assessment rate on natural gas property and establishes excise tax on distribution of natural gas; makes certain changes to the kilowatt-hour tax; makes changes with respect to the municipal income tax; expands the job training tax credit; and makes other changes related to taxation. Declares an emergency**

## State Fiscal Highlights

| STATE FUND | FY 2001 | FY 2002 | FUTURE YEARS |
|---|---|---|---|
| **General Revenue Fund** | | | |
| Revenues | - 0 - | Gain up to $27.3 million plus $6 to $17 million loss | Gain up to $27.3 million plus $6 to $17 million loss |
| Expenditures | - 0 - | Increase up to $27.3 million | Increase up to $27.3 million plus additional cost |
| Fire Marshal's Fund | | | |
| Revenues | - Potential loss - | - Potential loss - | - Potential loss - |
| Expenditures | - 0 - | - 0 - | - 0 - |

Note: The state fiscal year is July 1 through June 30. For example, FY 2003 is July 1, 2002 – June 30, 2003.

- Reduction in the assessed value of natural gas property will increase the required state aid to school districts. The increased foundation aid payments will begin in FY 2003; the GRF will receive revenue from the excise tax on natural gas distribution to fund this additional cost.

- Revisions to the self-assessing purchasers component of the kilowatt-hour tax will reduce GRF revenues by $6 to $17 million per year.

- The expansion of the job training tax credit to insurance companies could result in a small revenue loss to the Fire Marshal's Fund that is partly funded through revenues from insurance taxes.

## Local Fiscal Highlights

| LOCAL GOVERNMENT | FY 2001 | FY 2002 | FUTURE YEARS |
|---|---|---|---|
| **School districts** | | | |
| Revenues | - 0 - | $31.5 million loss offset by $31.5 million gain plus minimal additional loss | $63 million loss offset by $63 million gain plus additional loss |
| Expenditures | - 0 - | - 0 - | - 0 - |
| **Other Local Governments** | | | |
| Revenues | - 0 - | $27 million loss offset by $27 million gain | $27 million loss offset by $27 million gain plus additional loss |
| Expenditures | - 0 - | - 0 - | - 0 - |
| **Municipalities** | | | |
| Revenues | - 0 - | - 0 - | Potential additional 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.

- Changes in the taxable value of natural gas property reduce property tax revenues to schools and local governments, but the revenue is replaced by revenue from the newly created excise tax on natural gas distribution that is distributed to school districts and other local governments via the school district property tax replacement fund and the local government property tax replacement fund (created in S.B. 3). School districts receive 70 percent of the replacement revenues and local governments receive 30 percent.

- The first replacement payment is in February 2002, which is in the second half of the school district fiscal year, so the impact on school districts in FY 2002 is only a half-year impact.

- There will be an additional revenue loss to school districts and other local governments that host underground storage facilities for natural gas, as the assessment rate on inventories is phased out (due to HB 283). Some of this lost revenue to school districts will be compensated for by increased basic aid payments, but the remaining loss will not be covered by additional revenues from the tax on natural gas distribution.

- Changes in the apportionment formula for the municipal tax credit for owners of pass through entities could increase the potential revenue loss to municipalities due to the prospective tax credit.

# Detailed Fiscal Analysis

This bill reduces the assessment rate on the tangible personal property owned by natural gas companies and modifies the determination of the true value of current gas stored underground. It levies an excise tax on the distribution of natural gas and provides for the distribution of the revenue to local governments.

The bill makes numerous changes to the kilowatt-hour tax established in S.B. 3 of the 123rd G.A. It changes the amount of electricity an end-user must consume in order to qualify as a self-assessing purchaser and changes the calculation of the tax paid by the self-assessing purchaser. It specifies how the price of electricity would be determined for purposes of calculating the self-assessing purchaser tax. It requires the Department of Taxation to study the effects, fairness and structure of the kilowatt-hour tax with respect to commercial and industrial users and to report its findings to the legislative leadership by September 30, 2007. And it extends the deadline from December 31, 2000, to June 30, 2001 for the Director of Development to report the results of its study (mandated by S.B. 3) on the desirability of new job tax credits for generating equipment manufacturers. The bill also establishes a grant program to assist manufacturing enterprises in the Appalachian region that are negatively impact by the imposition of the kilowatt-hour tax.

The bill modifies the municipal income tax with respect to non-residents, pass-through entities, and electric companies. It terminates the authority of municipal corporations to levy municipal income taxes specifically for the purpose of sharing some of the revenue with overlapping school districts. It expands the tax credit for job training costs (enacted in H.B. 283). It recomputes a school district's share of the cost of a School Facilities Commission project under the Exceptional Needs program if reductions in gas pipeline property assessment rates lower a district's taxable valuation. It creates an exception to income tax residency rules and makes changes to the corporate franchise "exit" tax and the withholding tax requirements for nonresident pass-through entity investors.

The bill declares an emergency.

***Natural gas property assessment rate***

The property of natural gas public utilities is currently assessed for taxation at 88 percent of true value. This is the same assessment rate applied to the transmission and distribution facilities of electric distribution companies, as well as certain other public utilities. At the same time, the tangible personal property of non public utilities is generally assessed at 25 percent of true value. The bill reduces the assessment rate on natural gas public utility property to 25 percent – a reduction of roughly 72 percent.

Revenues from the public utility property tax go to local governments – of which approximately 70 percent go to school districts. In 1997, the assessed value of natural gas property was roughly $1.7 billion. The average tax rate on tangible property in 1997 was 72.4 mills, so that taxes on natural gas property amounted to approximately $123 million. Reducing the assessment rate to 25 percent – while holding true value and tax rates constant – would reduce revenues from natural gas property taxes to $35 million – a loss of $88 million. Seventy percent of this, or $61.6 million would be a revenue loss to school districts. The remainder - $26.4 million – would be a loss to other local governments. (The Tax Department estimates that the loss would be about $92 million - $64.4 million to school districts and $27.6 million to other local governments.)

Part of the loss to school districts would be replaced by increased basic aid payments due to the workings of the foundation aid formula. However, by itself, this provision would result in a revenue loss to most local governments. Assuming that the bill takes effect by December 31, 2000, the assessment rate change would be made beginning in calendar year 2001 and would first affect local government revenues in calendar year 2002.

***Tax on distribution of natural gas***

The bill replaces the revenue lost from this assessment rate reduction by a new tax on the distribution of natural gas (also known as the Mcf tax). The revenue from this tax is distributed back to local governments via the school district and local government property tax replacement funds established in SB 3 to hold schools and local governments harmless for the property tax revenue lost due to changes in the property taxation of electric utilities.

The replacement tax is an excise tax levied on every natural gas distribution company for all natural gas volumes – with certain exceptions – billed by or on behalf of the company on or after July 1, 2001. The exceptions include natural gas distributed to the federal government and natural gas produced by an end-user and consumed by that end-user or its affiliate.

The tax rate varies by volume consumed by each customer per month. Volume consumed is measured by each 1000 cubic feet or Mcf. It is levied at the following rate per Mcf (or thousand cubic feet) distributed per month:

| *Amount of natural gas distributed* | ***Rate per MCF*** |
|---|---|
| Up to 100 Mcf | $.1593 |
| 101 to 2000 Mcf | $.0877 |
| 2001 Mcf and above | $.0411 |

Hence, any natural gas end user (other than those excluded above) that consumed more than 100 Mcf per month would pay a tax of $.1593 per Mcf for the first 100 Mcf or $15.93; for any subsequent gas consumed – up to 2,000 Mcf – the consumer would pay a tax of $.0877 per Mcf. Any end-user that consumed over 2,000 Mcf would pay $15.93 for the first 100 Mcf plus $166.63 for the next 1,900 Mcf (1,900 x $.0877) plus $.0411 for each Mcf consumed over 2,000.

According to the Energy Information Agency, residential natural gas users in Ohio consumed an average of 113 Mcf per year over the 1996-98 period. Commercial users consumed an average of 687 Mcf and industrial users consumed an average of 41,418 Mcf over the same time period. Thus, based on these rates, the average residential, commercial and industrial user would pay $1.50, $9.12, and $242.24 per month in natural gas distribution taxes, respectively. However, this arithmetic example paints an incomplete picture for several reasons. First, natural gas consumption is highly seasonal, so the monthly consumption would vary considerably. Second, the size of both commercial and industrial customers especially varies considerably, so the average only supplies a general guide about how the tax would affect typical customers. And third, the bill provides a special rate for "flex customers" – that is, certain very large commercial and industrial customers or customers with special service contracts with natural gas companies. Specifically, the bill defines a "flex customer" as an industrial or commercial facility that has consumed more than one billion cubic feet of natural gas a year at any single location during any of the previous five years or an industrial or commercial end-user that purchases natural gas distribution services from a natural gas distribution company at discounted rates or charges pursuant to certain arrangements with the PUCO or municipal ordinance.

The tax rate charged on gas distributed to flex companies is reduced to $.02 per Mcf. In such cases the natural gas company is to decrease the rates that it charges flex companies by $.02 per Mcf for the distribution services that it provides, so that the net cost to the flex company of the distribution tax is zero.

LBO does not have information on the size distribution of natural gas users in Ohio or on the number and natural gas consumption of "flex companies." Thus, we are unable to make an independent estimate of the revenue that would be raised by this tax on natural gas distribution. The tax was originally structured to generate $90 million based on current consumption rates. However, depending on who qualifies as a "flex customer," the tax may or may not generate that amount. (The definition of "flex customer" seems open to various interpretations; for example, "consumption at a single location" is not defined. Furthermore, any "end user" that meets the definition of "flex customer" as of January 1, 2000 and thereafter would apparently be classified as a flex customer for tax purposes from then on, regardless of consumption levels.)

Natural gas companies would first be subject to the tax in July 2001 (i.e., FY 2002). The tax is to be remitted quarterly. The first payment is due on or before November 20, 2001 for the quarter ending September 30, 2001.

Natural gas companies would be required to adjust their rates to reflect the reduced property tax burden beginning April 1, 2001. This should reduce the companies' gross receipts by approximately $90 million per year, which would reduce the revenues from the natural gas excise tax. However, the Mcf tax receipts collected by a natural gas distribution company would be treated as taxable receipts under the gross receipts tax. Since the Mcf tax is estimated to offset the property tax cost, there should be no net impact on the public utility excise tax (i.e., the gross receipts tax).

The revenue from the new excise tax on natural gas distribution would be divided among the school district property tax replacement fund, the local government property tax replacement fund, and the state GRF.

The bill utilizes the mechanism established in S.B. 3 to distribute the revenue back to the affected local governments. The school district property tax replacement fund is to receive 70 percent of the revenues less 30 percent of the amount designated as the total state education offset. The total state education offset equals the total increase in state aid caused by the assessment rate reductions due to both this bill and S.B. 3. If all school districts were on the foundation formula, the total state education offset would equal $91 million – of this $28 million would be due to changes in this bill and $63 million due to S.B. 3 changes. The state education aid offset would be calculated starting in FY 2003. Thus, for the first replacement payment to school districts made in February 2002, school districts will receive the full amount of their foregone property tax revenue directly through the school district property tax replacement fund. Then, beginning in FY 2003, they will receive part of the payment via increased foundation aid payments.

The local government property tax replacement fund is to receive 30 percent of the revenue and the GRF is to receive the remainder – i.e., the natural gas property share of the state education aid offset (approximately $27.3 million beginning in FY 2003). However, in any year that the tax generates less than $90 million, both the local government property tax replacement fund and the school district property tax replacement fund are to receive the same amount of revenue that they would have received if the tax had generated $90 million. Any deficit is to come out of the revenues that are otherwise to be deposited in the state GRF.

The property tax replacement payments to school districts and local governments resulting from the reduced assessment rates on natural gas will be combined with those resulting from the electric company property tax changes. Moreover, the "tax value loss" due to the natural gas changes will be combined with the "tax value loss" due to the electric changes to determine how long school districts will continue to receive replacement payments equal to their lost revenue. (However, the "tax value loss" for natural gas companies will largely be based on 1999 values, rather than the 1998 values used in the calculation of the electric companies property tax value loss.) Thus, all school districts will receive replacement payments equal to the value of their loss for at least 5 years. After that, the revenue deposited into the school district property tax replacement fund is to be distributed to school districts on a per-pupil basis. This revenue is then to be used for capital improvements. As for local governments, for the first five years they will receive replacement payments equal to the amount of tax revenue lost. After the first five years, that replacement mechanism will be partially phased out, and a portion of the local government property tax replacement fund will be distributed in accordance with population.

***Treatment of current gas stored underground***

The true value of natural gas held as inventory ("current gas stored underground") is currently the cost of such gas as of December 31 of the preceding year. That value is then multiplied by 88 percent to find the taxable value. The bill requires that the true value of such property be determined in the same manner as that prescribed in Section 5711.15 of the *Revised Code*. In other words, it is to be treated the same as non-public utility tangible property. The true value of business inventories is based on a monthly average. That amount is then assessed at 25 percent to determine the taxable value of inventories. However, due to a provision in HB 283 of the 123rd General Assembly, the assessment rate on such inventories is to be phased out by one percentage point per year beginning in tax year 2002.

Thus, in addition to the tax loss of reducing the assessment rate from 88 percent to 25 percent there is another tax loss to a few local governments that receive property tax revenues from natural gas underground storage facilities. Revenues from the natural gas in such storage facilities would fall over time as the assessment rate on inventories fell. (This is likely to happen, anyway, since with natural gas choice, non public utilities are holding a larger and larger percentage of the gas in storage. The assessment rate applied to their gas will decline regardless of any changes by this legislation.) Local governments are held harmless from the effects of the first assessment rate reduction (from 88 to 25 percent) via the property tax replacement fund. However, they are not held harmless from the subsequent reductions in tax revenue due to the phasing out of the tax on inventory.

East Ohio Gas Co. and Columbia Gas Co. hold the largest amount of natural gas inventories in the state. At the end of 1999, the actual storage value for Columbia Gas was $22.2 million; the actual storage value for East Ohio was $14.2 million. Based on data obtained from Columbia Gas Co., 63 taxing districts including 27 school districts with underground storage facilities holding Columbia's natural gas inventories will be affected by this provision. Local governments and school districts in six additional counties containing underground storage of East Ohio's natural gas are also likely to be affected. Assuming that Columbia continues to hold roughly the same amount of gas in storage as it currently does, the reduction in assessment rate from 25 percent to 24 percent is likely to cost these 63 local tax districts from $5,124 to $7,320 in local property tax revenues in CY 2003 (a cost of up to $4,789 to school districts and $2,531 to other local governments). The loss with respect to East Ohio inventories would be an additional $3,278 to $4,682, for a total property tax revenue loss in 2003 of $8,402 to $12,002. School district property tax revenues will account for seventy percent of this cost; although additional basic aid payments will cover some of the lost revenue. The following year (CY 2004) would result in an additional property tax revenue loss of roughly the same amount ($8,402 to $12,002), and so on until the inventory tax is phased out. However, as natural gas companies own less and less of the gas in storage due to the expansion of natural gas choice – the cost will decrease, since the assessment rate on such gas held by non public utility owners would fall regardless of this bill.

The largest cost will likely be borne by Hillsdale LSD in Ashland County – with a revenue loss of up to $1,035. Of this $542 will be replaced by additional state aid. Therefore, Hillsdale's net loss would be $493 due to the assessment rate reduction on inventories in 2002. Again, the following year would result in an additional property tax revenue loss of $1,035, and so on until the inventory tax is phased out.

***Changes to the kilowatt-hour tax***

The bill makes certain changes to the kilowatt-hour self-assessing purchasers' tax established in SB 3 of the 123rd G.A, as recommended by the Joint Legislative Committee on the Kilowatt-hour tax (a temporary committee that was also established by S.B. 3). First, the bill reduces from 120 million to 45 million kWh the amount of electricity an end-user would have to consume on an annual basis in order to qualify as a self-assessing purchaser. Second, it caps the consumption component of the tax paid by the self-assessing purchasers. (The tax is calculated in two parts: a rate of $.00075 per kilowatt-hour consumed is added to 4 percent of the total price. The cap is set at 504 million kilowatt-hours; so that for self-assessing purchasers consuming in excess of 504,000,000 kWh, the tax would equal $378,000 plus 4 percent of the total price.) The bill also defines price in this context, but eliminates the recalculation of the tax over the first five years based on a target revenue amount.

The change in qualifications will increase the number of self-assessing purchasers from 65 to 195. This will increase the revenue to the kilowatt-hour excise tax administration fund by $65,000 annually. However, it will also decrease revenue from the kilowatt-hour tax by $3 to $14 million. The cap will decrease revenues by an additional $3 million per year.

The cost will be borne largely by the GRF. The GRF receives 59.976 % of the revenue from the kWh tax, while the LGF, the LGRAF, the school district property tax replacement fund and the local government property tax replacement fund receive, respectively, 2.646%, 0.378%, 25.9%, and 11.1%. However, if the total amount of tax received in any year is less than $552 million, the GRF is reduced by the amount necessary to credit each of the other funds with the amount it would have received had the tax raised $552 million. LBO assumes that, in the absence of this change, the amount generated would have been $552 million. In this case, the total cost of the provision would be borne by the GRF. If, the amount generated exceeded $552 million, then the other funds would share in the lost revenue.

The bill makes a few other changes with regard to the kilowatt-hour tax. It exempts electricity from the kWh tax if it is converted to a form of stored energy that is then used to regenerate electricity sold to another person. It allows high volume electricity users to self-assess the kWh tax if their use at a single location meets the 45 million kWh self-assessor threshold, even if the electricity is received through more than one meter. And it requires the Tax Department to study the effects, fairness, and structure of the kWh tax with respect to commercial and industrial users. These changes are not considered to have a significant fiscal effect.

The bill creates the Appalachian Energy Grant Authority to make grants available to eligible manufacturing enterprises located in Appalachia that are large users of electricity and are significantly impacted by the kilowatt-hour tax. The authority will make grants to eligible applicants between July 1, 2001, and July 1, 2004, from money appropriated for that purpose. (This bill makes no appropriation.) The authority would cease to exist beyond July 1, 2004.

### *Expansion of Job Training Tax Credit*

The bill modifies the recently enacted tax credit (in HB 283 of the 123rd G.A.) for an employer's job training costs primarily by extending it to businesses that currently do not qualify. H.B. 283 capped the total available credit at $20 million per year. This bill does not change that cap, but by expanding the number of businesses that may qualify for the credit, it increases the likelihood that the maximum credit will be taken each year. The analysis of H.B. 283 assumed that the maximum credit would be used each year, so that main fiscal effect of this bill would be the extent to which different funds would incur the cost.

This bill expands existing HB 283 job training tax credit to any taxpayer paying the corporate franchise tax and to which a tax credit certificate is issued. HB 283 limited the tax credit to specific industries. The bill also extends the credit to various taxpayers that have tax liabilities under other tax laws. Stockbrokers, mortgage brokers, securities dealers, finance and loan companies can claim a tax credit against the dealers in intangibles tax. Investors in pass-through entities such as S corporations, Limited Liability Corporations, partnerships, and sole proprietors are allowed to claim the tax credit against their state individual income tax credit. Foreign and domestic insurance companies may claim the tax credit against their respective tax liabilities.

The tax credit applies to costs incurred for specified job training expenses and employees incurred between January 1, 2000, and December 31, 2003. A company's credit can not exceed the lesser of $100,000 (total) or $1,000 per eligible worker (up from $500). The total amount of the tax credit that may be granted in one year is $20 million, with no more than $10 million allocated to industries primarily engaged in manufacturing. H.B. 283 limited the tax credit to less than half of the taxpayer's prior year tax liability. This bill removes that restriction. The tax credit includes a carry-forward provision, so that it is possible that the annual cost of the credit would be less than $20 million, but that it could continue beyond FY 2004.

The bulk of the foregone revenues would have been deposited into the General Revenue Fund (GRF). GRF receives 95.2% of corporate franchise tax revenue, 3/8 of dealers in intangible tax revenue, 89.5% of state income tax revenue, and about 98% of insurance taxes. The Fire Marshal's Fund receives about 1% of domestic and foreign insurance taxes. Various local government funds will experience revenue loss due to the tax credit. Local Government Fund (LGF) receives 4.2% of corporate franchise tax and of state income tax. Local Government Revenue Assistance Fund (LGRAF) receives 0.6 percent of corporate franchise tax and of state income tax. County Undivided Local Government Fund receives 5/8 of dealers in intangible tax. Library and Local Government Support Fund (LLGSF) receives 5.7 % of state individual income tax. The revenue loss to each of these funds will depend on the amount of credit granted to businesses in the various industries and services.

The bill also transfers in January 2001 the job training tax credit from the Department of Development (DOD) to the Department of Job and Family Services (DJFS). Calendar year 2000 to date, the Department of Development has received 6 job training tax credit applications. However, the number of applications for this tax credit is expected to increase as more companies become aware of its existence and requirements. LBO estimates that the total amount of the credit will potentially equal the annual statutory cap of $20 million as more companies are granted the job training tax credit. Again, this is the same as the estimate used in the analysis of H.B. 283, so this provision has no overall additional fiscal impact.

### *Other income tax and corporate franchise tax changes*

The bill creates an exception to the personal income tax residency rules that will allow persons to spend up to 30 days in Ohio for unpaid work, fund-raising for a 501(c)3 organization, funerals, or family medical reasons without that time counting toward the current residency thresholds. (Currently, a person may be considered a resident if the person has more than 120 overnight stays in Ohio during the year.) It modifies the withholding tax requirements for nonresident pass-through entity investors and it tightens up the corporate franchise "exit" tax paid by corporations that leave Ohio before the regular corporate franchise tax is payable.

The change in the residency rules will result in a revenue loss. That loss is expected to be offset by the changes to the tax withholding requirements for nonresident pass-through entities and the modification of the corporate franchise "exit" tax.

### *Municipal income tax changes*

The bill clarifies the municipal income tax law with respect to non-residents and pass-through entities. First, it clarifies that non-residents generally (other than professional entertainers, athletes, or promoters) will not be subject to the municipal income tax for income received for personal services performed in a municipal corporation for 12 or fewer days. This will have minimal impact.

Second, it changes the apportionment formula for the municipal tax credit available (beginning in 2003) to owners of pass-through entities. Share owners who live in a municipality where the pass-through entity does not do business would receive a credit for taxes paid to another municipal corporation (where the entity does business). Essentially, the new apportionment formula would base the credit on the income of all the *resident* owners of the pass-through entity rather than on the income of all owners of the entity. This would serve to increase the credit (each owner's income would represent a larger proportion of the smaller base) and would therefore decrease municipal income tax revenues.

The bill modifies the law governing the municipal taxation of electric companies (as enacted in HB 483). The changes are consistent with the assumptions used in the fiscal note for HB 483 and thus will have no additional fiscal impact.

The bill also terminates the authority of municipal corporations to levy municipal income taxes specifically for the purpose of sharing some of the revenue with overlapping school districts. Currently, only one taxing district (Euclid) is currently using this type of tax and it will be grand fathered in. Therefore, this provision will have no fiscal impact.

***Recalculation of school district share of building costs due to potential assessment rate change***

The bill recomputes a school district's share of the cost of a School Facilities Commission project under the Exceptional Needs program if reductions in gas pipeline property assessment rates lowers the district's taxable valuation.

The school districts whose percentages have been determined under the school facilities exceptional needs programs include several that are relatively dependent on public utility property and are likely to be dependent on natural gas or pipeline property, in particular. These districts include Alexander LSD (Athens County), Tri-Village LSD (Darke County), Central LSD (Defiance County), Morgan LSD (Morgan County) and Westfall LSD and Teays Valley LSD (both in Pickaway County). Any one of these districts may be sufficiently dependent on revenue from pipeline property that any change in its assessment rate would greatly hamper the district's ability to finance its share of the project. Thus, a recalculation of the local share would be warranted. However, the bill does not change the assessment rate on pipeline property, so this provision currently would have no impact.

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