Local Impact Statement Report

For Bills Enacted in 2011

SEPTEMBER 2012

Legislative Service Commission
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The photograph of the Statehouse cupola on the front cover is courtesy of the Ohio Statehouse Photo Archive.

Introduction

R.C. 103.143 requires the Legislative Service Commission (LSC) to determine whether a local impact statement (LIS) is required for each bill that is introduced and referred to committee. An LIS may be required when a bill could result in net additional costs beyond a minimal amount to school districts, counties, municipalities, or townships. An LIS is not required for budget bills or joint resolutions. It is also not required when the bill is permissive or when the bill's potential local costs are offset by additional revenues, offset by additional savings, or caused by a federal mandate. The LIS determination is based solely on the "As Introduced" version of the bill.

R.C. 103.143 also requires LSC to annually compile the final local impact statements completed for laws enacted in the preceding calendar year. The Report is to be completed by September 30 each year. This 2012 Report covers the 70 bills enacted in calendar year 2011, seven of which required an LIS. The LIS requirement is met through the detailed analysis of local fiscal effects included in LSC's fiscal notes.

Regardless of whether a bill requires an LIS, the fiscal note analyzes the bill's fiscal effects on both the state and local government. However, under R.C. 103.143, when a bill requiring an LIS is amended in a committee, the bill may be voted out of the committee by a simple majority vote with a revised LIS (a requirement fulfilled by preparing an updated fiscal note) or by a two-thirds vote without a revised LIS. Because various bills are exempted from the LIS requirement, this Report does not include every bill enacted in 2011 that may have fiscal effects on local government. It should also be noted that fiscal notes in this Report were prepared for the General Assembly's deliberations on pending legislation. This means that cost estimates included in fiscal notes may differ from the actual costs of implementing these laws, as the estimates were made before the enacted legislation was implemented. For those who are interested in the local fiscal effects of all legislation enacted in 2011, please see the LSC fiscal notes for those laws, which are available on the LSC web site (*www.lsc.state.oh.us*) by clicking on *Bills/Resolutions & Related Documents*.

In addition to this introduction, the Report contains comments from the County Commissioners' Association of Ohio, the Ohio Municipal League, the Ohio Township Association, and the Ohio School Boards Association. LSC is required to circulate the draft Report to these associations for comment and to include their responses in the final Report. The main section of the Report includes the final version of the fiscal notes for the seven bills enacted in 2011 that required an LIS and became law. The 50 House bills and 20 Senate bills enacted in 2011 are listed in the appendix.

This Report may be viewed online at *www.lsc.state.oh.us* by clicking on *Publications*, and then *Local Impact Statement Report* under the *Staff Research Reports* heading.

LOCAL GOVERNMENT ASSOCIATION COMMENTS

As noted in the Introduction to this Report, various bills are exempted from the LIS requirement and, consequently, a Local Impact Statement Report inadequately reflects the burden upon county government that is imposed through unfunded mandates and policy decisions of the General Assembly. Primary among those exemptions is the state's biennial budget bill.

In 2011 Ohio was faced with a significant structural imbalance which policy makers were determined to manage without any revenue enhancements or tax increases. It was widely acknowledged that funding cuts to local governments would be part of the solution to the budget crisis. CCAO envisioned the opportunity for real reform to tackle inefficiencies at the county level and effectuate reform that would provide services in a more cost-effective and efficient manner. To that end, throughout the budget process CCAO offered a multitude of ideas aimed at various reforms, sharing services, and "doing things differently." While we appreciate that a number of these proposals were eventually adopted, they constituted the "low hanging fruit." In the end the reform gained did not equate to the sacrifices incurred through the budget process.

Significant provisions contained within H.B. 153, the state biennial budget for fiscal years 2012 and 2013, which are "missed" by this Report include:

- Taking the Local Government Fund "off formula" and making a biennial appropriation to the LGF based upon the State Fiscal Year (SFY) 2011 funding that generally appropriates 75% of that amount to the political subdivisions in SFY 2012 and 50% of that amount in SFY 2013;

- Accelerating the phase-out of reimbursements for lost tangible personal property taxes and public utility tangible property taxes;

- Providing several new exemptions from the sales and use tax that have the practical effect of reducing revenue to the counties that levy a sales tax;

- Reducing the funding to support the administration of the counties' Family and Children First Councils;

- Eliminating DRC Adult Parole Authority staff which had been conducting presentence investigation and report writing for common pleas courts across the state;

- Cutting funding to county agricultural societies that is used to partially reimburse them for their expenses in providing youth activities;
- Increased the audit costs the county must pay to the Auditor of State for performing the audit of county; and
- Continuing to reduce the general revenue funding for indigent defense reimbursement.

Counties are uniquely tied to the state as the provider of state services at the local level on the state's behalf. The vitality and viability of this state/county partnership is directly impacted through all actions of the General Assembly. Therefore, CCAO urges the General Assembly to review all legislation enacted for its impact upon Ohio's local governments through the LIS process. Only then, will the General Assembly and the public receive the true picture of the impacts that unfunded mandates and policy decisions have upon the counties and other local governments.

CCAO thanks the Legislative Service Commission for the opportunity to comment on this Report and wishes to acknowledge the professionalism and extreme competence of the LSC staff. Irrespective of the concerns CCAO raises regarding the LIS process, CCAO has always found the work of LSC to be invaluable and much appreciated.

OHIO MUNICIPAL LEAGUE

The Ohio Municipal League has reviewed the draft of the Local Impact Statement Report for Bills Enacted in 2011 and would like to make the following comments.

The Report provides helpful information to organizations representing local governments, their respective members and the public: information that would otherwise be difficult to compile. It shows that numerous pieces of legislation have a potential negative impact on local government, whose officials are already faced with declining revenues.

An area that still needs to be addressed is the section of law that exempts LSC from having to update a local impact statement for the biennial budget, capital appropriations bill, or any other budget corrections bill. The League would support legislation that would allow the General Assembly to include these bills that are now exempted under Division (F) of R.C. 103.143 from these local impact statements. OML also believes that local impact statements should be required at each phase of the legislative process. This is particularly important as substitute versions and amended substitute versions of bills are enacted. Legislation can have a huge fiscal impact upon local government and should be known to all as these bills progress through the legislature.

We are always optimistic that this document will gain a larger recognition with state decision makers as they consider imposing additional programs or duties on local government or reducing limited funding.

The Ohio Municipal League commends the staff of the Legislative Service Commission for the time and effort they put into the individual statements and to this Report.

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OHIO TOWNSHIP ASSOCIATION

The Ohio Township Association (OTA) would like to thank the Ohio Legislative Service Commission (LSC) for the opportunity to comment on the proposed 2012 Local Impact Statement Report. The LSC Local Impact Statement Report helps educate our membership and the members of the General Assembly on the effect certain legislation will have on township budgets and keeps legislators and local officials aware of any unfunded mandate created in legislation proposed and passed by the General Assembly.

The fiscal impact legislation may have on townships often is underestimated. Provisions established in legislation such as filing, notification and public hearing requirements could create significant costs for townships. The OTA is pleased that LSC takes such costs into consideration when determining local fiscal impact.

A bill is determined to have fiscal impact if its estimated annual cost is more than $1,000 for townships with a population of less than 5,000 or if its estimated annual cost is more than $5,000 for townships with a population of more than 5,000. Although $1,000 or $5,000 may not seem like a great deal of money when compared with the total budget of the township, the loss of such revenue may create a significant impact.

According to the 2012 Report, there are three bills with a local impact on townships. It is projected that the Local Government Fund (LGF), of which townships receive revenue, will see a reduction in funds from the enactment of H.B. 58 and H.B. 167. The enactment of H.B. 95 potentially could force townships to pay higher prices for natural gas.

While the 2012 Local Impact Statement Report offers an analysis of legislation passed in 2011, it is not as inclusive as we would like. State budget bills are exempted from local impact statement requirements and, therefore, are not included in this Report. Significant fiscal impacts were incurred by townships as a result of the state's budget (H.B. 153) process. Financial hardship was experienced due to the LGF being reduced 25% in FY 2012 from amounts received in FY 2011 and 50% in FY 2013, the accelerated phase out of the tangible personal property and electric deregulation tax, and the elimination of the estate tax as of January 2013.

Monies from the LGF are used in every community across the state and therefore affect every resident in Ohio. For most townships, the LGF is the second highest source of revenue for townships behind property tax collection of inside and outside millage.

Townships do not have the ability to make up the lost LGF revenue by passing other taxes such as the income or sales tax. Any lost LGF revenue will require additional property tax levies. In a time when it is increasingly difficult to pass levies, this could mean reductions in services provided by the township or financial troubles.

The OTA encourages the General Assembly to include budget bills in the LIS Report in order to provide a more comprehensive look at how legislation passed affects local governments. A procedure should be established by which local governments can contest new laws that are not fully funded, yet give the General Assembly adequate time to modify or fund the mandates they impose.

Although the actual impact these new laws will have on townships will not be known until the laws are put into practice, the fiscal analyses provide a base for our townships to determine how a new law may affect their budgets. The Ohio Township Association appreciates the opportunity to provide our input and thanks the Legislative Service Commission for all of their hard work in compiling this data, as it is truly beneficial to legislators and local government groups.

Ohio School Boards Association

The Ohio School Boards Association (OSBA) appreciates the opportunity to review the 2012 Local Impact Statement Report prepared by the Legislative Service Commission (LSC) for members of the Ohio General Assembly and the general public. The document clearly outlines the fiscal impact of various bills on local government units, including public schools. The Report provides the reader with valuable understanding of the cost and programmatic implications of selected bills.

The 2012 Local Impact Statement Report indicates that seven bills were enacted during 2011 requiring local impact statements. Three of the seven bills do have a fiscal impact on local school districts. These bills are Sub. H.B. 58, Am. H.B. 167, and Am. S.B. 71.

OSBA, along with other educational stakeholders, is very active throughout the legislative process. However, the purposes of these bills were specific to personal income tax reduction and, as such, offered only limited opportunity for any modifications that would have lessened the burden on school districts.

Two of the bills, Sub. H.B. 58 and Am. H.B. 167, reduce the total state tax revenues available through a reduction in taxable income. As noted in the Report, not all school districts employ a school district income tax. To the extent that the application of these bills does reduce the personal income tax base, these districts will experience a loss in tax revenues. However, as the Report notes, the projected losses are not large for any one district. It should be noted though that any losses ultimately impact the quality of education at the local level.

The third bill, Am. S.B. 71, affects only one district, Avon Local School District, due to a tax exemption for a stadium in that district. Normally, the loss in property tax valuation would be offset through an increase in state foundation payments to the district. However, due to the fact that Avon Local receives transition payments that exceed the loss, they will actually see a reduction of nearly $210,000 in tax revenues. Again, this change will impact the dollars available for public education in that community.

Am. H.B. 21, the Teach for America enabling legislation, does not have a direct fiscal impact on districts. While it will provide school districts with an additional source of teacher candidates and may be valuable in attracting talented young people into the teaching profession, the actual results of Teach for America are mixed. Typically, the Teach for America teachers only stay in teaching for a limited time, so the long-term benefit is muted. In addition, data on student achievement does not provide evidence that Teach for America teachers are any more successful than the more traditionally trained teachers. It is appropriate that the choice of using Teach for America candidates remains a local decision.

Finally, it should be noted that the most significant legislative fiscal impact on schools was contained in Am. Sub. H.B. 153, the biennial budget bill, which is exempt from the requirement for a fiscal impact statement. Through a loss of federal stimulus dollars and changes in state reimbursement for local dollars lost by elimination of tangible personal property taxes and public utility property taxes, Ohio's public school districts lost nearly $2.8 billion in funds during the current biennium.

We continue to believe that the fiscal impact statements are necessary and would continue to support legislation to require the General Assembly to consider the local impact of <u>any</u> bills adopted, including the biennial budget, capital appropriations bill, and any budget corrections bill which are now exempted from such local statements. As in prior years, we would encourage that fiscal impact statements be issued at each step of the legislative process as changes occur from the "As Introduced" version of a bill.

Once again, OSBA wishes to express appreciation to the Legislative Service Commission for its hard work and diligence on this important task. We look forward to working with you now and in the future.

FISCAL NOTES FOR BILLS ENACTED IN 2011 REQUIRING LOCAL IMPACT STATEMENTS

Ohio Legislative Service Commission

Edward M. Millane

Fiscal Note & Local Impact Statement

Bill: Sub. H.B. 21 of the 129th G.A.

Date: April 13, 2011

Status: As Enacted

Sponsor: Rep. Combs

Local Impact Statement Procedure Required: Yes

Contents: Qualifies Teach for America participants for a resident educator license

State Fiscal Highlights

- Any costs incurred by the Ohio Department of Education related to teacher licensure would likely be offset by fees charged to licensees.

Local Fiscal Highlights

- No direct fiscal effect on political subdivisions.

Detailed Fiscal Analysis

The bill directs the State Board of Education to issue a resident educator license to applicants who are assigned to teach in Ohio as a Teach for America participant or who have completed at least two years of teaching in another state as a Teach for America participant, as long as the applicants meet certain other conditions outlined in the bill. The Ohio Department of Education's administrative costs related to teacher licensure are typically offset by fees charged to licensees.

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Ohio Legislative Service Commission

Jean J. Botomogno

Fiscal Note & Local Impact Statement

Bill: Sub. H.B. 58 of the 129th G.A. **Date**: March 2, 2011

Status: As Enacted **Sponsor**: Rep. Beck

Local Impact Statement Procedure Required: Yes

Contents: Incorporates into Ohio income tax law changes to the Internal Revenue Code since December 15, 2010, creates a new, refundable job retention tax credit, temporarily extends the look-back period for purposes of state extended unemployment benefits, and declares an emergency

State Fiscal Highlights

STATE FUND	FY 2011	FY 2012	FUTURE YEARS
General Revenue Fund			
Revenues	$21.9 million loss	$30.8 million loss	$18.4 million loss in FY 2013; diminishing annual losses after FY 2013
Expenditures	Potential increase due to the reduction in CAT receipts; Potential increase from extended unemployment benefits	Potential increase due to the reduction in CAT receipts; Potential increase from extended unemployment benefits	Potential increase due to the reduction in CAT receipts; - 0 -

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

- Conforming Ohio income tax law to recent federal income tax changes reduces Ohio Adjusted Gross Income and decreases revenue from the personal income tax (PIT).
- The job retention tax credits are likely to decrease revenue from the personal income tax, the corporate franchise tax (CFT), the insurance premiums tax, and the commercial activity tax (CAT).
- Revenue from GRF taxes is distributed to the GRF (94.35% in FY 2011 under H.B. 1, and 94.1% under permanent law). Starting in FY 2012, revenue from the CAT will be distributed, in various percentages, to the GRF.
- Revenues from the CAT are earmarked mostly for reimbursing school districts and other local governments for the reductions and phase-out of local taxes on most tangible personal property. If CAT receipts are insufficient, the GRF is required to subsidize the required reimbursements.

- The bill could increase GRF and non-GRF expenditures for state agencies to issue state extended unemployment benefits to eligible unemployed individuals from March 2011 to the first week of January 2012.

Local Fiscal Highlights

LOCAL GOVERNMENT	FY 2011	FY 2012	FUTURE YEARS
Counties, Municipalities, Townships, and Libraries			
Revenues	$1.3 million loss from tax changes	$1.9 million loss from tax changes	$1.2 million loss in FY 2013 from tax changes; diminishing annual losses after FY 2013
Expenditures	Potential increase from extended unemployment benefits	Potential increase from extended unemployment benefits	- 0 -
School Districts			
Revenues	Loss of up to $0.6 million in income taxes	Loss of up to $1.0 million in income taxes	Loss of up to $0.5 million in income taxes
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.

- Receipts from GRF taxes are distributed in part to the Local Government Fund (3.68%) and the Public Library Fund (1.97% in FY 2011 under H.B. 1, and 2.22% under permanent law). Thus, the reduction in GRF tax receipts from the job retention tax credit and from conforming Ohio income tax law to federal law would decrease distributions to the two funds.
- The bill reduces Ohio taxable income, which reduces receipts from the school district income tax.
- The bill could increase expenditures for local government entities to issue state extended unemployment benefits to eligible unemployed individuals from March 2011 to the first week of January 2012.

Detailed Fiscal Analysis

Incorporation into Ohio law of changes in the Internal Revenue Code since December 15, 2010

The bill incorporates changes to the Internal Revenue Code (IRC) since December 15, 2010 to Ohio income tax law. Conforming Ohio law to the IRC is expected to reduce state income tax revenue, on an all-funds basis, by $15.2 million in FY 2011, $24.7 million in FY 2012, and $11.6 million in FY 2013. Revenue losses will gradually diminish in years after 2013. The estimates are from the Department of Taxation. Under permanent law, GRF tax revenue is distributed to the GRF at 94.1% (94.35% in FY 2011),[1] the Local Government Fund at 3.68%, and the Public Library Fund at 2.22% (1.97% in FY 2011). Thus, GRF losses, based on distribution of state tax revenue, would be $14.3 million in FY 2011, $23.2 million in FY 2012, and $10.9 million in FY 2013. Losses to the two local government funds would total, respectively, $0.9 million, $1.5 million, and $0.7 million.

H.R. 4853, the federal "Tax Relief, Unemployment Insurance Reauthorization and Job Creation Act of 2010" (TRUIRaJCA), was signed into law December 17, 2010. This federal law was enacted after Ohio Revised Code section 5701.11 was last amended (H.B. 495, signed December 15, 2010). Ohio income tax returns start with the federal adjusted gross income (FAGI). The new federal income tax law contains numerous individual and business provisions that reduce FAGI. The bill allows those changes amending FAGI in the TRUIRaJCA to be incorporated into the definition of Ohio adjusted gross income (OAGI) as defined in Ohio Revised Code section 5747.01. The effective date for certain provisions is for taxable years starting after December 31, 2009. Those provisions are expected to reduce FY 2011 receipts. The effective date of other provisions is for taxable years starting after December 31, 2010, thus affecting receipts in FY 2012 and later fiscal years. Also, some of the provisions have a sunset date while others do not.

The reduction of OAGI also reduces Ohio taxable income, which is the starting point for the school district income tax for most of the school districts.[2] Based on a ratio of statewide school district income tax receipts to state individual income tax receipts, the reduction in school district income tax receipts may be up to $0.6 million in FY 2011, $1.0 million in FY 2012, and $0.5 million in FY 2013.

The revenue loss estimates above are primarily based on nationwide estimates of the fiscal impact of the various provisions of the federal law. Those federal revenue losses were projected by the Joint Committee on Taxation of the U.S. Congress on

[1] H.B. 1 of the 128th General Assembly changed the statutory distribution of tax revenues for FYs 2010-2011.

[2] Alternatively, certain school districts use earned income as the tax base for their income tax.

December 10, 2010. Ohio revenue losses were calculated based on Ohio's share of federal taxable income, and income tax rates.

Please note that the revenue loss estimates above do not include the impact of the expansion of the "bonus depreciation" and enhanced expensing in the TRUIRaJCA. Under current rules for "bonus depreciation" in Ohio, only 1/6th of any deduction taken in the federal return is allowed in the Ohio return, for the first applicable taxable year, i.e., 5/6th of the deduction is added back into OAGI before the computation of the state tax liability. Then, in each of the five subsequent taxable years, the taxpayer deducts one-fifth of the amount previously added back. The estimates assume the "1/6th deduction and 5/6th add back" mechanism continues. Taxpayers are allowed the full federal depreciation deduction, but the mechanism ensures that revenue losses to Ohio from "bonus depreciation" are spread out over several years. The impact of the "bonus depreciation" is assumed to fall largely on corporations. However, Ohio does not have a corporate income tax; and, due to the "1/6th deduction and 5/6th add back" mechanism, the fiscal impact of the "bonus depreciation" is generally deemed minimal on an annual basis, though it might increase overall revenue loss estimates for the bill.

Refundable job retention credit

Under current law, eligible businesses may claim a nonrefundable job retention tax credit (JRTC) against the personal income tax (PIT), commercial activity tax (CAT), insurance company premiums tax, or corporate franchise tax (CFT). The tax credit is measured as a percentage of the state income taxes withheld from full-time employees working at the project site. The percentage is determined by the Ohio Tax Credit Authority, up to a maximum of 75%.

The bill allows a business that meets existing JRTC requirements to claim a new, refundable tax credit if the firm also meets various additional criteria. They include making an investment of at least $25 million at a project site over a period of three years that includes the year for which the credit is granted.[3] In addition, in 2010, the business must have received a written offer of financial incentives from another state, and the Director of Development must have determined that the offer is sufficient inducement for the business to relocate to that other state. And for a business to be eligible, the Director of Development, the Director of Budget and Management, the Tax Commissioner, and the Superintendent of Insurance (in the case of an insurance company) must have recommended the granting of the credit to the Tax Credit Authority before July 1, 2011.

A business that qualifies for a refundable JRTC may claim the full amount of the credit in one year, regardless of tax liability. If the credit exceeds the tax liability, the business is entitled to a refund. The bill requires that a recipient of a refundable JRTC

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[3] The capital investment must involve capitalized costs of basic research or new product development, or the acquisition, construction, renovation, or repair of buildings, machinery, or equipment.

employ and retain at least 1,000 employees. Also, the business must file annual reports with the Department of Development and receive a certification verifying the accuracy of the reports. If a business fails to comply with any of the conditions specified in a tax credit agreement, the Tax Credit Authority may amend the agreement to reduce the percentage or term of the credit. For a complete list of eligibility criteria and comparison of the new refundable JRTC with the existing nonrefundable JRTC, please see the LSC bill analysis.

Aggregate credit limits

The bill allows the issuance of up to $8 million in refundable tax credits in any calendar year. (Current law limits the total amount of nonrefundable tax credits issued in any calendar year. In 2010, the limit was $13 million; this amount will increase every year between 2011 and 2024 by $13 million over the previous year's amount until the total reaches $195 million.) Assuming the allowable amount of refundable job retention tax credits is issued, the bill reduces GRF tax revenues by up to $8 million each year. The reduction in receipts from the PIT, CFT, CAT, and the insurance premiums tax will decrease distributions to the three funds. Under the prescribed distribution of GRF tax receipts, the revenue loss to the GRF will be up to $7.5 million each year. Revenue reductions to the LGF and the PLF will be up to $0.3 million and $0.2 million, respectively.

Revenues from the CAT are earmarked mostly for reimbursing school districts and other local governments for the reductions and phase-out of local taxes on most tangible personal property (TPP). Under current law, the GRF is required to subsidize the required reimbursements to the School District Tangible Property Tax Replacement Fund and the Local Government Tangible Property Tax Replacement Fund, if CAT receipts are insufficient. The share of CAT receipts to school districts is 70%. The share of CAT receipts to local governments other than school districts, which is variable, is currently 30% for FY 2011. That share will decrease to 24.7% in FY 2012, and to 19.4% in FY 2013. The GRF share will rise from 0% in FY 2011 to 5.3% in FY 2012 and 10.6% in FY 2013. The tax credit is likely to reduce receipts from the CAT and distributions to the three funds.

Changes to the formula used to trigger state extended unemployment benefits

The bill temporarily changes the formula used to trigger state extended unemployment benefits (EB) based on the total unemployment rate for the time period the federal government is fully paying for those benefits (until December 31, 2011) for claimants of most private employers.

While state EB are currently being fully funded by the federal government for most employers, federal funding for state EB is not available for governmental entities that are reimbursing employers.[4] Therefore, the bill could increase expenditures for

[4] Reimbursing employers do not contribute to the Unemployment Compensation Trust Fund but instead reimburse the Trust Fund when benefits are chargeable to a reimbursing employer.

state and local government entities to issue EB to eligible unemployed individuals from March 2011 to the first week of January 2012.[5] Affected employers may include state and local governments, public colleges and universities, school districts, public libraries, and public hospitals.

According to the Ohio Department of Job and Family Services (ODJFS), in 2010, state agencies (including state hospitals and higher educational facilities) expended $1.5 million for EB to about 485 beneficiaries and local government entities expended $4.3 million for EB to about 1,920 beneficiaries. State agencies may use GRF and non-GRF funds for these benefits. The amount state agencies and local government entities may expend over the next ten months under the bill could be more or less than the amounts expended in 2010, depending on the number of laid-off workers that are eligible for EB after exhausting regular benefits (up to 26 weeks) and other federally extended benefits (53 weeks). Eligibility for EB can only be established after exhausting these benefits. The last day an individual can establish eligibility is December 10, 2011. EB is payable for up to 20 weeks, though the last week of payment ends January 7, 2012, regardless of when eligibility was established.

The bill may also minimally increase the amount Ohio would need to borrow from the federal government to issue EB for claimants of reimbursing employers, which could increase the amount of state interest owed on borrowed amounts. EB are paid out of the state's Unemployment Compensation Trust Fund regardless of whether the employer is a contributory or reimbursing employer. Claims for contributory employers are reimbursed by the federal government within 24 hours. Reimbursing employers are billed once a month to reimburse the trust fund for benefits paid. It is possible that in some months of 2011 Ohio may need to borrow from the federal government to issue EB benefits on behalf of reimbursing employers. (Since January 2009 Ohio has been borrowing from the federal government to issue benefits.) As interest accrues on borrowed amounts on a daily basis, interest would accrue for any amounts borrowed to issue EB benefits to claimants of reimbursing employers. Though benefits would be reimbursed to the trust fund within a month, some interest would accrue in the meantime. As ODJFS estimates federal borrowing in the hundreds of millions in some months in 2011 to issue regular benefits, any interest accrual due to this bill would be minimal.

Ohio must make an interest payment to the federal government on September 30, 2011. The estimated payment is $73.1 million, and must be paid from state funds.

Emergency

The bill declares an emergency, meaning its provisions would go into immediate effect.

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[5] Out of the 5,033 reimbursing employers, approximately 3,300 are governmental entities.

Ohio Legislative Service Commission

Joseph Rogers

Fiscal Note & Local Impact Statement

Bill: Am. Sub. H.B. 86 of the 129th G.A.
Date: September 30, 2011

Status: As Enacted
Sponsor: Reps. Blessing and Heard

Local Impact Statement Procedure Required: Yes

Contents: Criminal sentencing and juvenile justice reforms

State Fiscal Highlights

STATE AGENCY	FY 2012 – FY 2015
Department of Rehabilitation and Correction (DRC)	
Revenues	- 0 -
Expenditures	Four-year incarceration cost savings of up to $46.2 million, likely offset to some degree by need to increase subsidies for local community corrections programs
Department of Youth Services (DYS)	
Revenues	- 0 -
Expenditures	Likely expenditure reduction, annual magnitude uncertain

Note: The state fiscal year is July 1 through June 30. For example, FY 2012 is July 1, 2011 – June 30, 2012.

- **Department of Rehabilitation and Correction.** The bill, over the course of approximately four years subsequent to its effective date, will reduce the number of inmate beds in the Department of Rehabilitation and Correction's (DRC) prison system and is estimated to generate a total four-year incarceration cost savings of up to $46.2 million. The magnitude of this savings effect may be reduced by the need to transfer GRF funds not needed for the appropriated purpose of institutional operations to the Department's parole and community services operations for the purpose of handling an increase in the number of offenders subject to community-based sanctions.
- **Department of Youth Services.** Changes to the disposition of certain juvenile delinquency cases and the release of juveniles from a state juvenile correctional facility may generate a minimal annual savings in the Department of Youth Services' institutional operating costs.

Local Fiscal Highlights

LOCAL GOVERNMENT	FY 2011 – FUTURE YEARS
Counties and Municipalities (criminal justice systems)	
Revenues	Potential gain in state community corrections funding, annual magnitude uncertain
Expenditures	Potential increase to the criminal justice system to sanction offenders, annual magnitude uncertain
Counties (juvenile justice systems)	
Revenues	- 0 -
Expenditures	Potentially significant annual increase for certain counties to establish juvenile competency assessment and treatment procedures

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

- **Threshold amount determining increased penalties.** There will be a shifting of some cases from the felony jurisdiction of the courts of common pleas to the misdemeanor jurisdiction of municipal and county courts. As misdemeanor cases are generally less expensive to process, there should be some savings for affected counties, and a corresponding cost increase in criminal case processing for an affected municipality. Presumably, counties and municipalities will also incur additional jail costs to sanction these offenders who would not be sentenced to a prison term. It is not clear how much additional jail time will result from the bill, but at an average cost of around $65 per day, it would take just 77 additional jail days to exceed the minimum local impact threshold of $5,000 per year for any affected county or municipality.
- **Increased diversion of offenders.** The bill provides, in certain felony cases, a preference for one or more community control sanctions rather than the imposition of a prison sentence. To the degree that the preference functions as envisioned, then there would presumably be some increased demand on local community control sanction systems. This could in turn increase the local demand for DRC's community corrections grants funding.
- **Subsidy revenues.** The additional cost that counties and municipalities will incur, in particular the costs to sanction offenders diverted from prison and into community control sanctions, will in all likelihood be offset to some degree by additional state community corrections subsidies distributed by DRC. The degree to which that state funding will offset increased local sanctioning costs is uncertain.
- **Juvenile competency procedures.** The requirement that juvenile courts establish competency procedures may significantly increase the assessment and attainment costs of certain counties.

Detailed Fiscal Analysis

The bill makes numerous criminal sentencing provision changes, as well as changes to the state's juvenile justice system. For the purposes of this fiscal analysis, the bill has been organized into the following two broad categories: (1) criminal justice system changes, and (2) juvenile justice system changes.

Criminal justice system changes

The bill's numerous criminal sentencing changes are generally designed to reduce the size of the state's prison population and related institutional operating expenses by: (1) diverting otherwise prison-bound nonviolent offenders into less expensive community-based alternative sanctions, and (2) reducing the lengths of stay for certain offenders that are sentenced to a prison term from what those lengths of stay might otherwise have been under current law and practice.

For the purposes of this analysis, we have identified some of the most fiscally salient provisions of the bill and discussed each in more detail below. The net fiscal effect of these provisions will be to reduce enough inmate beds to create a total savings, through FY 2015, of approximately $46.2 million in the Department of Rehabilitation and Correction's (DRC) institutional operating costs.

With regard to these estimated incarceration cost savings, the following caveats should be noted:

- The magnitude of this savings effect may be reduced by the need to transfer GRF funds not needed for the appropriated purpose of institutional operations to the Department's parole and community services operations for the purpose of handling an increase in the number of offenders subject to community-based sanctions. In that regard, Am. Sub. H.B. 153 the main operating budget of the 129th General Assembly contains a temporary law provision requiring, for the purposes of implementing criminal sentencing reforms, the Director of Budget and Management, at the request of the Director of Rehabilitation and Correction, to transfer up to $14,000,000 in appropriations, in each of FYs 2012 and 2013, from GRF appropriation item 501321, Institutional Operations, to certain GRF appropriation items that fund community-based corrections programs.
- Not all of the bill's criminal justice system provisions will have an immediate effect in terms of reducing DRC's institutional operating expenses. Some provisions, such as the earned credit reform, may not begin to reduce the prison population and produce a savings effect until a year or two after the bill becomes effective. Accordingly, most of the cost savings estimates below are based on the impact of the provisions after a three-year period.

Release of offenders who have served at least 80% of their sentences

The bill authorizes the Director of Rehabilitation and Correction to petition the court for the judicial release of an offender with a stated prison term of one year or more who has served at least 80% of the term. This provision does not apply to any offender serving a life term or a term for any of a list of specified felonies of violence, including sexually oriented offenses. The bill further requires that an offender, serving a sentence for a first or second degree felony, who is released pursuant to a DRC petition, be placed in one or more appropriate community sanctions, and that the court must consider global positioning system (GPS) monitoring in specified cases.

State fiscal effects

After a period of about three years, this provision of the bill will potentially eliminate the need for approximately 360 or so inmate beds, thus creating an incarceration cost savings of around $1,473,120 (360 beds x $4,092, the estimated FY 2013 marginal cost per inmate). Any such cost reductions or savings could potentially be offset by expenditures for the GPS supervision placed on first and second degree felony offenders if so ordered by the courts. These GPS related costs could reach $1.4 million if it is required for all applicable offenders. If DRC is expected to pay for the monitoring of indigent offenders, the net amount of any savings is not clear.

Establishment of community alternative sentencing centers

The bill provides for the establishment and operation of community alternative sentencing centers by counties or affiliated groups of counties, the purpose of which would be to confine misdemeanants sentenced directly by the court under a community residential sanction not exceeding 30 days, or pursuant to an "OVI term of confinement" not exceeding 60 days.

State fiscal effects

There is no expectation at this time that the state will provide financial assistance to defray any of the related capital improvements or operating expense costs that a county might incur.

Local fiscal effects

The cost that a county might incur in order to establish and operate a community alternative sentencing center is uncertain. For example, the legal and regulatory requirements that such a center would have to comply with, and any attendant costs, are unclear. Also unclear is whether a county would need to utilize debt financing to undertake the necessary capital improvements. That said, to the extent that these misdemeanant beds replace more expensive full-service jail beds, then a county may realize some long-term savings in correctional expenditures.

Threshold amount determining increased penalties

The bill increases the initial threshold amount that is used in determining increased penalties, generally from a misdemeanor to a felony, for theft-related offenses and certain elements of the offenses of "vandalism" and "engaging in a pattern of corrupt activity." This set of provisions will reduce the number of offenders sentenced to a prison term, and increase the number of offenders sanctioned locally.

State fiscal effects

This set of provisions will potentially result in the elimination of around 440 or so inmate beds within a three-year period, thus creating an incarceration cost savings of $1,800,480 (440 beds x $4,092, the estimated FY 2013 marginal cost per inmate).

Local fiscal effects

There will also be a shifting of some cases from the felony jurisdiction of the courts of common pleas to the misdemeanor jurisdiction of municipal and county courts. As misdemeanor cases are generally less expensive to process, there should be some savings, of uncertain magnitude, for an affected county, and, in theory, a corresponding cost increase in criminal case processing for an affected municipality. Presumably, counties and municipalities will also incur additional jail costs to sanction these offenders who would not be sentenced to a prison term. It is not clear how much additional jail time will result from the bill, but at an average cost of around $65 per day, it would take just 77 additional inmate jail days to exceed the minimum local impact threshold of $5,000 per year for any affected county or municipality.

Penalties for felony "nonsupport of dependents"

The bill provides, in certain cases of felony "nonsupport of dependents," a preference for one or more community control sanctions. This provision of the bill would reduce the likelihood that certain offenders will be sentenced to a prison term.

State and local fiscal effects

After three years, this provision could potentially eliminate the need for about 100 inmate beds, thus creating an incarceration cost savings of about $409,200 (100 beds x $4,092, the estimated FY 2013 marginal cost per inmate). This provision of the bill will not reduce the number of convictions for "nonsupport of dependents," but will change the range of sanctions that are available to the court in certain cases. To the degree that the preference functions as envisioned, then there would presumably be some increased demand on local community control sanction systems. This could in turn increase the local demand for DRC's community corrections grants funding, which means that any incarceration cost savings will be partially offset by the need to enhance funding for its parole and community services operations.

Offense of "escape"

Prior to the bill, offenders on parole or post-release control (PRC) who abscond supervision can be charged with the offense of escape, the penalty for which ranges from a felony of the fifth degree to a felony of the first degree depending on the severity of the offense for which the offender was under supervision. The bill creates a new prohibition within the offense of "escape" that parallels the current prohibition but applies only to a person under "supervised release detention" and reduces the penalty generally to a felony of the fourth or fifth degree if the supervised release detention was for murder, an offense with a life sentence, or a first or second degree felony.

State fiscal effects

The new prohibition against absconding would allow the Adult Parole Authority (APA) to utilize various sanctions at their disposal, thus avoiding new felony charges in some instances. The bill also generally reduces the penalties for escape. These provisions would eliminate the need for about 50 beds within three years, thus creating an incarceration cost savings of around $204,600 (50 beds x $4,092, the estimated FY 2013 marginal cost per inmate).

Elimination of penalty distinction between cocaine and crack cocaine

The bill eliminates the distinction between the criminal penalties provided for drug offenses involving crack cocaine and those offenses involving powder cocaine, and provides a penalty for all such drug offenses involving any type of cocaine that generally has a severity that is between the two current penalties.

State fiscal effects

The impact of eliminating certain distinctions will be to generally reduce the total number of years served by offenders in the state's prison system for cocaine-based offenses. After three years, this provision would potentially eliminate the need for an estimated 267 inmate beds, thus creating an incarceration cost savings of $1,092,564 (267 beds x $4,092, the estimated FY 2013 marginal cost per inmate).

Penalties for certain trafficking offenses

For the offenses of "trafficking in marihuana," "trafficking in hashish," "possession of marihuana," and "possession of hashish," the bill creates a new category of the amount of the drug involved and provides for a potentially shorter mandatory prison term if the new category applies to the offender.

The bill also provides that, in specified circumstances regarding an offender who is guilty of "trafficking in marihuana," "trafficking in hashish," or "possession of cocaine," the current felony sentencing guidelines apply in determining whether to impose a prison term on the offender. Existing guidelines, which are not changed by the bill, state a presumption against a prison term. Currently, for the two trafficking offenses in the specified circumstances, there is neither a presumption for nor a presumption against a prison term, and for the possession offense in the specified circumstances, there is a presumption for a prison term.

State fiscal effects

This provision will generally reduce the total number of years served by offenders for the above-referenced drug offenses. After three years, this provision will likely eliminate the need for 140 beds, thus creating an incarceration cost savings of $572,880 (140 beds x $4,092, the estimated FY 2013 marginal cost per inmate).

Intervention in lieu of conviction eligibility and procedures

The bill provides that intervention in lieu of conviction (ILC) is available to persons charged with specified theft or nonsupport offenses, and authorizes ILC for an offender whose mental illness or retardation contributed to the criminal behavior. The bill also requires that a request for ILC include a statement as to whether the offender alleges that drug or alcohol use or mental illness or retardation contributed to the offense. Offenders alleging that drug or alcohol use contributed to the offense must be assessed by a certified program or credentialed professional for ILC eligibility, a plan of intervention recommended, and the assessment be given to the court.

State and local fiscal effects

This provision will likely divert certain offenders away from the prison system and into local treatment programs, and eliminate the need for around 31 inmate beds, thus creating an incarceration cost savings of $126,852 (31 beds x $4,092, the estimated FY 2013 marginal cost per inmate). While the diversion of these offenders from prison may reduce DRC's incarceration expenditures, there would likely be a corresponding increase in local expenditures for the assessment and treatment of certain additional offenders. The magnitude of these potential additional local assessment and treatment costs is uncertain.

Earned credit for DRC inmates

Prior to the enactment of this bill, an eligible offender in a state correctional institution could earn one day of credit as a monthly deduction from the offender's prison term for productive participation in specified prison programs. The bill revises that earned credit mechanism so that:

1. Certain offenders, if eligible for the mechanism under the current criteria as expanded, may earn five days of credit for completion of a specified program;
2. Other offenders, if eligible for the mechanism under the current criteria as expanded, who are imprisoned for any of a list of specified, serious offenses, may earn one day of credit for completion of a specified program;
3. The types of programs that may be available for earning days of credit under the mechanism will be limited to those involving education, vocational training, prison industry employment, and substance abuse treatment (sex

offender treatment programs and other "constructive programs" developed by DRC are removed);

4. All offenders, if eligible for the mechanism under the current criteria, who successfully complete two specified programs may earn up to five days of credit for the successful completion of the second program; and
5. Offenders serving a sentence for a sexually oriented offense, as defined in the SORN Law, are not eligible for the mechanism.

State fiscal effects

Within a three-year period, this provision will eliminate the need for around 380 or so beds, thus creating an incarceration cost savings of $1,554,960 (380 beds x $4,092, the estimated FY 2013 marginal cost per inmate). To the extent that disqualifying offenses are added to the existing list, any estimated savings would be reduced as fewer offenders would be eligible for the five days of earned credit. The total number of days of credit an offender may earn under the earned credit mechanism cannot exceed 8% of the total number of days in the offender's stated prison term.

GPS monitoring of certain offenders after release

The bill requires that an offender who is placed on post-release control from the offender's stated prison term by reason of earning 60 or more days of credit for participation in certain programs be subject to GPS supervision by the APA for the first 14 days after release from imprisonment.

State fiscal effects

DRC estimates that this provision will apply to at least several hundred offenders annually with third, fourth, or fifth degree felony convictions. The first and second degree felony offenders face GPS requirements through the other earned credit provision of this bill. If these offenders wear GPS monitors for 14 days after release, at $11 per day, the annual cost to the Department could exceed $100,000.

State v. Foster

The bill revises some of the provisions in the state's Felony Sentencing Law that were invalidated and severed by the Ohio Supreme Court's decision in *State v. Foster* to preserve the policy of the provisions but eliminates the procedures that the Court found to be objectionable.

State fiscal effects

The reenactment of these felony sentencing provisions from the *Foster* case is expected to lead to a gradual reduction in the prison population over the next several years. The Department expects this reduction in prison population could reduce incarceration costs by $15.1 million to $19.4 million over the next five years or more.

Justice Reinvestment provisions

The bill also incorporates several additional sentencing reform initiatives which stem from a study and report of the Council of State Governments' Justice Reinvestment in Ohio. Some of the more fiscally relevant provisions among the sentencing reform recommendations from this study incorporated into the bill include:

- Requiring a community-based sanction for at least one year's duration for offenders who are convicted of or plead guilty to certain nonviolent felonies of the fourth or fifth degree, unless the offense involved a firearm. The fiscal effect of this provision would be to eliminate more inmate beds and further reduce prison-related GRF operating expenditures by diverting more low-level nonviolent offenders out of the prisons and into more cost-effective alternative sanctions; and
- Establishing a mechanism for "risk reduction sentencing" in which certain felony offenders may qualify and be recommended, by the sentencing judge, for risk reduction sentencing. If these offenders complete the required treatment or programming that is part of the risk reduction sentence, they may be granted release after serving a minimum of 80% of the stated prison term. Offenders serving a sentence for a sexually oriented offense would be excluded.

These Justice Reinvestment Reform provisions complement or enhance some of the other provisions in the bill to further increase the number of offenders either released early through sentence reduction or diversion away from prison altogether and into community-based sanctions.

The interrelationships between these provisions in the bill can be quite complex. For example, the diversion of nonviolent fourth and fifth degree felony offenders away from prison, as per the Justice Reinvestment Reforms, will complement the impact of the other provisions in the bill that divert offenders away from prison, such as increasing the felony thresholds for theft offenses and placing felony nonsupport offenders into community sanctions. The diversion of these offenders away from prison will simultaneously reduce the numbers of offenders subject to the early release or earned credit provisions in the bill. If low-level offenders are diverted away from prison in the first place, there will be fewer offenders that qualify for one of the early release provisions. These complex interrelationships between the provisions of the bill create difficulties in presenting an accurate estimate of the net savings effect. That said, the bill carries the potential to produce an incarceration cost savings of up to around $46.2 million over the course of three to five years or so.

With respect to the provisions in the bill that would divert offenders from prisons into alternative community-based sanctions, it is also important to note that there would presumably be some increased demand on local community control sanction systems. This would in turn increase the local demand for DRC's community corrections grants funding, which means that the savings in state incarceration costs will be partially offset by the need to enhance funding for its parole and community services operations.

An additional area of reform stemming from the study and report of the Council of State Governments' Justice Reinvestment in Ohio involves changes to the operations of county level probation services. The most fiscally relevant of these provisions in the bill is the requirement that probation officers be trained in accordance with a set of minimum standards established by the APA.

Under current law, local jurisdictions that receive Community Corrections Act (CCA) grants from DRC to support probation services are required to have probation officers trained in accordance with APA standards. This provision of the bill would have little impact in these jurisdictions. For those local jurisdictions in which the probation departments do not receive any CCA grant funding, specific training is not required. Since the bill requires all probation officers to have APA-approved training, then some jurisdictions will incur costs to train their probation personnel. The precise cost of such training is unknown at this time, but depending on the number of personnel to be trained and the cost of the training, some counties and municipalities could incur costs in excess of the minimal threshold of $5,000.

Juvenile justice system changes

The bill makes changes to the juvenile justice system designed generally to reduce the number of juveniles committed to a state juvenile correctional facility and to more effectively utilize the state and local resources available in the treatment of juvenile offenders. Most notably these changes include: (1) amending the manner in which a juvenile court disposes of certain cases, (2) standardizing juvenile competency procedures, (3) clarifying judicial release procedures, (4) creating the Ohio Interagency Task Force on Mental Health and Juvenile Justice, and (5) requiring prioritization of the use of money in a county felony delinquent care and custody fund. These provisions of the bill and their fiscal effects are discussed in more detail below.

Juvenile court dispositions

The bill's changes to a juvenile court's dispositional authority: (1) restrict the mandatory transfer of alleged delinquent juveniles to adult court to certain youth that are sixteen or seventeen years of age at the time of the offense, (2) create a new procedure whereby the dispositional jurisdiction of juveniles subject to mandatory bindover proceedings may be transferred back to the juvenile court under certain conditions, and (3) limit the length of confinement to a maximum of one year for certain youth found to be complicit in another person's violation of a firearm specification.

State fiscal effects

These provisions will affect the Department of Youth Services (DYS) by triggering factors that both increase and decrease institutional operating costs, the net effect of which will be a decrease in annual institutional operating costs. These factors include:

1. A potential increase in institutional population and corresponding commitment costs, as certain juveniles may be adjudicated and committed to a state juvenile correctional facility instead of being transferred to the criminal justice system and subsequently sentenced to a prison term; and
2. A potential decrease in institutional population and corresponding commitment costs resulting from confinement limitations for certain firearm-related specifications, as certain juveniles may not be committed to a state juvenile correctional facility or may be committed for a shorter term than might otherwise have been the case under current law and practice.

Local fiscal effects

Juvenile courts may experience a potential increase in cases where jurisdiction of a juvenile offender is retained as a result of fewer transfers to the criminal (adult) justice system, and a corresponding increase in adjudication costs. Likewise, the criminal justice system may experience a potential reduction in the number of juvenile cases transferred to a court of common pleas, and the Department of Rehabilitation and Correction may experience a potential reduction in population resulting in a corresponding savings in county prosecution, investigation and indigent defense costs, and in state prison costs.

Juvenile competency procedures

The bill establishes: (1) procedures for determining the competency to participate in the proceeding of a juvenile who is the subject of a complaint alleging that the juvenile is unruly or delinquent, and (2) procedures for a juvenile to attain competency if the juvenile is found to be incompetent.

Local fiscal effects

The bill standardizes procedures for determining the competency of a juvenile in juvenile court. The standardized procedures include the possibility of additional hearings and findings, which would increase the amount of time the court spends on a given case, and a competency evaluation that is paid for by the court. Additionally, if a court finds that a juvenile is not competent but has reason to believe that the juvenile could attain competency within a specified time period, the court may order the juvenile to receive competency attainment services at the expense of the county. Current law does not address these issues, and as a result, each county has developed its own procedures for determining competency and dealing with a juvenile determined not to be competent.

The extent to which a juvenile court may incur additional costs is uncertain and would largely depend on the number of motions made to determine the competency of a juvenile alleged to be unruly or delinquent. Other factors would include the cost of any competency evaluations performed and the cost of any competency attainment services that may be ordered by the court. Certain counties, such as Hamilton and Cuyahoga, may incur fewer costs to implement the standardized procedures as they are likely to already have procedures in place that largely comport with the bill's requirements. There are likely, however, to be juvenile courts in other counties that could incur significant costs to comply with the required competency determination and attainment procedures.

Judicial release procedures

The bill clarifies when a juvenile committed to DYS generally may be granted a judicial release and authorizes judicial release for a juvenile committed to DYS when the commitment includes a period of commitment imposed for certain specifications. The bill may result in shorter periods of confinement for certain juveniles committed to the custody of DYS and residing in one of the state's juvenile correctional facilities, the practical fiscal effect of which could be some reduction in the Department's annual institutional operating costs.

Ohio Interagency Task Force on Mental Health and Juvenile Justice

The bill establishes the Ohio Interagency Task Force on Mental Health and Juvenile Justice to investigate and make recommendations on how to most effectively treat delinquent youth who suffer from serious mental illness or emotional and behavioral disorders. Not later than March 31, 2012, the Task Force is required to issue a report of findings and recommendations, after which it ceases to exist.

Task Force members will not be entitled to either compensation or reimbursement of expenses incurred in the performance of their duties and responsibilities. However, various state agencies involved in providing services to youth, including, but not limited to, the departments of Youth Services, Mental Health, and Education, may incur minimal one-time administrative costs to assist the Task Force by providing office and meeting space, information, and professional or clerical staff assistance. It is likely that these state agencies can fairly easily absorb these costs into their ongoing day-to-day business.

County felony delinquent care and custody funds

The bill encourages a county and the juvenile court that serves the county to prioritize the use of money in the county's felony delinquent care and custody fund to research-supported, outcome-based programs and services. As a result of this provision, certain programs and services may be more or less likely to be funded in the future.

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Ohio Legislative Service Commission

Russ Keller

Fiscal Note & Local Impact Statement

Bill: Am. Sub. H.B. 95 of the 129th G.A. **Date**: May 25, 2011

Status: As Enacted **Sponsor**: Rep. Stautberg

Local Impact Statement Procedure Required: Yes

Contents: To revise state energy policy principally to address natural gas price regulation

State Fiscal Highlights

STATE FUND	FY 2012	FY 2013	FUTURE YEARS
Consumers' Counsel Operating Fund (Fund 5F50)			
Revenues	- 0 -	- 0 -	- 0 -
Expenditures	Potential increase	Potential increase	Potential increase
Other State Funds – expenditures for natural gas			
Revenues	- 0 -	- 0 -	- 0 -
Expenditures	Potential increase	Potential increase	Potential increase

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

- By proposing changes to the rate setting procedure of the Public Utilities Commission (PUCO), the Ohio Office of the Consumers' Counsel (OCC) may incur additional expenses to evaluate the impact of the rate changes made possible by H.B. 95. The nature of the increase, if any, is dependent on the frequency and complexity of the rate adjustments authorized by the bill.
- H.B. 95 permits certain changes to natural gas rates that would otherwise not occur but for the provisions in the bill. The direct effect of the changes would likely be an increase in natural gas prices paid by state government.

Local Fiscal Highlights

LOCAL GOVERNMENT	FY 2011	FY 2012	FUTURE YEARS
Counties, municipalities, townships, school districts			
Revenues	- 0 -	- 0 -	- 0 -
Expenditures	Potential increase	Potential increase	Potential increase

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

- H.B. 95 permits certain changes to natural gas rates that would otherwise not occur but for the provisions in the bill. The direct effect of the changes would likely be an increase in natural gas prices paid by local governments.

Detailed Fiscal Analysis

H.B. 95 modifies current law by permitting the use of projections in valuing a natural gas company's property, for the purpose of determining rates in a rate case. Current law requires that the property to be valued be "owned," "held," "leased," or "received" by the company seeking the rate increase and "used and useful" or "in use."

The bill also permits natural gas companies to propose another change to the rate-calculation formula, with regard to the company's revenues and expenses. Specifically, it allows natural gas companies to propose adjustments to the revenues and expenses for any changes that are "reasonably expected to occur" during the test period or the 12-month period immediately after the test period.[1] The bill requires the natural gas company proposing the adjustments to identify and quantify each adjustment. If PUCO determines that these adjustments based upon estimated data are just and reasonable, PUCO is required to incorporate the proposed adjustments into its determination of the natural gas company's revenues and expenses. Once actual data for all incorporated adjustments becomes known, PUCO must issue an order on the rate or charge adjustments. After the order is issued, a natural gas company must submit reconciliation adjustments that refund to customers (if applicable) the (positive) difference between the actual revenues collected by the natural gas company as compared to the projected revenues using the rates and charges previously incorporated using estimated data. A second and final reconciliation will occur after the 12-month effective period, and further rate adjustments may be made at that time.

[1] Under current law governing rate-increase cases, a public utility's permitted gross annual revenues are calculated by adding the amount of return (determined by PUCO) to the public utility's cost of rendering service. This cost must be determined during a "test period," which is, unless PUCO orders otherwise, the 12-month period beginning six months before the application filing date.

H.B. 95 also expressly permits PUCO to allow, for a natural gas company in a rate case, an automatic adjustment mechanism or device that allows the company's rates or charges for a regulated service or goods to fluctuate automatically with changes in a specified cost or costs.

The bill alters various laws governing alternative rate plans for natural gas companies. An alternative rate plan is a method for establishing rates and charges for distribution service, fully regulated commodity sales services, or fully regulated ancillary sales services that does not rely on the law governing rate cases.

Additionally, the bill authorizes a natural gas company to apply to PUCO in order to implement a capital expenditure program. The bill requires PUCO to approve the application if the proposed program is consistent with the natural gas company's continuing law obligation to furnish necessary and adequate services and facilities. An approved application authorizes the natural gas company to defer, for subsequent recovery, certain costs related to the capital expenditure program.

Many other regulatory changes are included in the bill; however, they do not have a fiscal impact.

Fiscal effect

It is possible that the provisions in H.B. 95 will increase expenditures by the Office of the Consumers' Counsel (OCC). The agency utilizes internal staff as well as experienced consultants to evaluate complex regulatory issues. The presence of these new types of natural gas rate adjustments proposed in the bill, as well as the nature of the property valuation provisions, might necessitate additional expenditures to conduct an analysis of natural gas companies' applications and proposals. The nature of the expenditure increase, if any, is dependent on the frequency and complexity of the rate adjustments authorized by the bill. Any potential increase in OCC spending would be paid from the Consumers' Counsel Operating Fund (Fund 5F50). H.B. 95 makes changes to certain requirements regarding natural gas companies filing reports with PUCO, but LSC staff think it likely that PUCO will be able to accommodate those changes with existing resources. PUCO officials agree that that is likely. However, the rate adjustment and reconciliation provisions in H.B. 95, if utilized to a significant degree, could create additional costs for PUCO.

H.B. 95 permits certain changes to natural gas rates that would otherwise not occur but for the provisions in the bill. Such rate changes would affect amounts paid by a gas company's customers, including the state and its political subdivisions, for the company's services. The direct effect of the changes would likely be an increase in natural gas prices paid by state and local governments (and other consumers); but, indirect effects may mitigate, in part, the direct effect of this bill.

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Ohio Legislative Service Commission

Russ Keller

Fiscal Note & Local Impact Statement

Bill: Am. H.B. 167 of the 129th G.A. **Date**: November 16, 2011

Status: As Enacted **Sponsor**: Reps. Derickson and Mallory

Local Impact Statement Procedure Required: Yes

Contents: To authorize an income tax deduction for the otherwise taxable portion of a federal Pell Grant or Ohio College Opportunity Grant used to pay room and board for a postsecondary student

State Fiscal Highlights

STATE FUND	FY 2012	FY 2013	FUTURE YEARS
General Revenue Fund			
Revenues	Loss, potentially up to several million dollars	Loss, potentially up to several million dollars	Loss, potentially up to several million dollars
Expenditures	- 0 -	- 0 -	- 0 -

Note: The state fiscal year is July 1 through June 30. For example, FY 2012 is July 1, 2011 – June 30, 2012.

- Authorizing the taxable portion of a federal Pell Grant or Ohio College Opportunity Grant (OCOG) to be excluded from taxable income would reduce GRF personal income tax revenues by up to several million dollars per year.

Local Fiscal Highlights

LOCAL GOVERNMENT	FY 2011	FY 2012	FUTURE YEARS
Counties, municipalities, townships, and public libraries (LGF and PLF)			
Revenues	- 0 -	- 0 -	Loss, potentially up to $100,000 or more
Expenditures	- 0 -	- 0 -	- 0 -
School districts that levy a school district income tax (SDIT)			
Revenues	Negligible loss, if any	Loss, potentially up to $100,000 or more	Loss, potentially up to $100,000 or more
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.

- Authorizing the taxable portion of a federal Pell Grant or Ohio College Opportunity Grant (OCOG) to be excluded from taxable income would potentially reduce Local Government Fund (LGF) and Public Library Fund (PLF) revenues starting in FY 2014.

- The exclusion of select educational grants from Ohio adjusted gross income (OAGI) will reduce the tax base for the majority of the Ohio school districts that levy a school district income tax (SDIT). Presently, 152 school districts levy an SDIT where OAGI serves as the tax base, and approximately 11.4% of Ohio's taxable income is attributable to taxpayers in one of these 152 school districts.

Detailed Fiscal Analysis

H.B. 167 authorizes an individual to deduct, for purposes of determining Ohio adjusted gross income, amounts used to pay for room, board, and any meal plan administered by the educational organization, if the amounts were received in the form of a federal Pell Grant or an Ohio College Opportunity Grant (OCOG). The Federal Pell Grant Program provides need-based grants to low-income undergraduate and certain postgraduate students. The Ohio College Opportunity Grant Program provides need-based assistance to Ohio residents in nursing degree and undergraduate programs.

Federal law excludes from an individual's adjusted gross income amounts received as a scholarship or fellowship grant to the extent the individual uses the funds for tuition, fees, books, supplies, and equipment required for courses of instruction at a post-secondary educational organization. Amounts used for room and board are not exempt and are therefore included in federal adjusted gross income. Because federal adjusted gross income is the starting number for determining an individual's Ohio income tax liability, amounts used for room and board are currently subject to Ohio income taxation.

The deduction applies to taxable years ending on or after tax year (TY) 2011. If the Pell Grant recipient is a spouse or a dependent of a taxpayer, the taxpayer may exclude the applicable Pell Grant amount from his/her Ohio taxable income.

Fiscal effect

The proposed deduction would reduce the personal income tax base beginning in TY 2011, thereby reducing receipts from the state's personal income tax. Income tax receipts are allocated to the GRF. Under the current rules governing the OCOG, there would be no revenue loss associated with exempting OCOG benefits from taxation. There may be a revenue loss associated with Pell Grant awards though. Data limitations make it impossible to estimate the magnitude of that revenue loss with precision. Accordingly, the following analysis attempts to determine an upper limit to the revenue loss.

The current OCOG distribution formula substantially impacts the degree to which Pell Grants will be used for room and board. Because of laws enacted in H.B. 1 of the 128th General Assembly, Pell Grants are increasingly used to cover the cost of tuition. Presently, OCOG funds are restricted to tuition and general fees, which is the reason that the income tax exemption of OCOG funds would have no fiscal impact[1] under current law. If, in the future, room and board expenses are included in the OCOG award, the proposed income tax exemption may have an effect.

Federal Pell Grants are direct grants awarded through participating institutions to students with financial need who have not received their first bachelor's degree or who are enrolled in certain postbaccalaureate programs that lead to teacher certification or licensure. Data from the U.S. Department of Education indicate that Ohio four-year institutions received $511.4 million for the 2009-2010 academic year through the Federal Pell Grant Program. For the most part, educational institutions that have their own room and board facilities are four-year institutions. The average Pell Grant award at public four-year institutions in 2009-2010 was $3,729, and 99,663 students received this award (refer to Table 1). For private four-year institutions, there were 38,022 recipients receiving an average award of $3,675.

Table 1. Pell Grant Recipients at Ohio Institutions in 2009-2010 Academic Year

Educational Institution	Number of Pell Grant Recipients	Average Award
Public, Four-Year Total	99,663	$3,729
Private, Four-Year Total	38,022	$3,675
All, Four-Year Total	137,685	$3,714[2]

Changes in H.B. 1 of the 128th General Assembly made it so Pell Grants are less likely to be used toward the cost of room or board furnished by an educational institution. OCOG is the only state-funded need-based financial aid program for students in postsecondary education. The OCOG distribution formula specifies that OCOG awards are determined based on the student's remaining "state cost of attendance" after the student's federal Pell Grant and expected family contribution (EFC) are applied. EFC is determined based on the Federal Application for Free Student Aid (FAFSA), which also determines Pell eligibility. The "state cost of attendance" is established by the Chancellor of the Board of Regents and is calculated for each campus individually based on expected educational costs. Under the Chancellor's current definition of "state cost of attendance," OCOG awards may only be used for tuition and general fees. The definition is subject to change; therefore, in the

[1] Under current law, there is one exception to the OCOG limitations, affecting only a small group of students. The Chancellor of the Board of Regents is permitted to award OCOG funds to pay housing costs if a student is enrolled in a two-year institution and is eligible for an Education and Training Voucher available to students currently or formerly in the foster care system. However, OCOG-eligible living expenses for these students would be unlikely to qualify for the tax exemption because the exemption is limited to funds used for room and board furnished by the student's institution and very few two-year institutions offer on-campus housing and meal plans.

[2] Weighted average of Pell Grant awards at both types of educational institution.

future, the Chancellor may include educational expenses such as books, transportation, room, and board.

Because the OCOG distribution formula is predicated on the presence of Pell Grants and EFC, the Pell Grants will supplant OCOG awards in paying for tuition. Therefore, the current distribution formula has the effect of reducing (but not eliminating) the likelihood that Pell Grants will be used to pay room and board expenses. OCOG awards based on state cost of attendance are more restrictive than Pell Grants because, while OCOG can be applied only to instructional costs, the Pell Grant may be used for things like living expenses. Due to federal Pell Grant increases, students of Ohio's university branch campuses, community colleges, state community colleges, and technical colleges will have a state cost of attendance that is completely covered by Pell Grants and EFC, and will not receive OCOG awards in FY 2012. Thus, the likeliest Pell Grant recipients to utilize this tax provision are those at four-year colleges, and specifically, public four-year colleges given that those institutions generally have lower tuition than private four-year colleges.

Tables 2 and 3 provide an estimate as to how many students attending four-year institutions would receive Pell Grants as well as the amount of the Pell Grants a student would likely be awarded. The two tables differentiate students by tax filing status, which distinguishes between those that are claimed as dependents (Table 2) within a household, and those that file independently or jointly with a spouse (Table 3). The 2007–2008 National Postsecondary Student Aid Study (NPSAS:08), which is a report completed by the U.S. Department of Education's National Center for Education Statistics, provided data on the average Pell Grant awards for differing levels of household income as well as the distribution of the Pell Grant recipients within those specified household income levels. In using information from the Ohio Department of Taxation on income levels and corresponding tax liabilities, effective tax rates and the resulting tax savings can be determined for these Pell Grant recipients. The estimate of total foregone revenue represents the maximum possible revenue loss in the event that all Pell Grant recipients at four-year institutions use the entire Pell Grant award toward room and board expenses. LSC does not have data that identifies the allocation of Pell grant awards to room and board, which is why the total foregone revenue estimate is represented as a maximum revenue loss as opposed to a likely revenue loss.

Table 2. Pell Grant Awards by Household Income of Student with Dependent Status

Estimated 56,393 Students in Ohio	Less than $20,000	$20,000 – $39,999	$40,000 – $59,999	$60,000 – $79,999	TOTAL
Average Pell Grant Award	$4,000	$3,200	$1,800	$600	N/A
Effective Tax Rate	0.43%	1.57%	2.17%	2.50%	N/A
Tax Savings Per Taxpayer	$17.04	$50.15	$38.98	$14.98	N/A
Distribution of Pell Grant Recipients	35.7%	45.5%	18%	0.8%	100.0 %
Number of Recipients	20,132	25,659	10,151	451	56,393
Total Foregone Revenue	**$343,001**	**$1,286,909**	**$395,721**	**$6,754**	**$2,032,385**

Table 3. Pell Grant Awards by Household Income of Student with Independent Status or Filing Jointly with Spouse					
Estimated 81,292 Students in Ohio	**Less than $10,000**	**$10,000 – $19,999**	**$20,000 – $29,999**	**$30,000 – $49,999**	**TOTAL**
Average Pell Grant Award	$3,800	$3,100	$3,500	$2,400	N/A
Effective Tax Rate	0.04%	0.56%	1.30%	1.93%	N/A
Tax Savings Per Taxpayer	$1.37	$17.48	$45.55	$46.35	N/A
Distribution of Pell Grant Recipients	39.9%	27.1%	15.8%	17.0%	99.8%[3]
Number of Recipients	32,436	22,030	12,844	13,820	81,292
Total Foregone Revenue	**$44,490**	**$385,138**	**$585,031**	**$640,554**	**$1,655,213**

In order to account for the current OCOG distribution formula, only Pell Grant recipients at four-year institutions are included in this fiscal analysis. It is highly likely that Pell Grants will be infrequently used for room and board at other types of institutions. Table 4 below summarizes the maximum revenue loss for TY 2011 assuming that every Pell Grant recipient at a four-year institution uses their entire award for room and board. The actual revenue loss would almost certainly be lower because many students at four-year colleges will use their Pell Grant toward tuition, and even those that use them toward the cost of room and board may not choose to live on campus. Nevertheless, data are unavailable for LSC staff to estimate the impact of these two factors. Thus, a maximum annual revenue loss estimate is provided below. This analysis assumes the number of recipients and the average amount of the Pell Grant awards are equal to 2009-2010 levels. Also, the estimate assumes that no taxpayer has more than one Pell Grant recipient in their household.

Table 4. Pell Grant Recipients at Four-Year Ohio Institutions		
Dependency Status of Student	**Estimated Number of Students**	**Foregone Revenue (Maximum Possible Amount)**
Dependent	56,393	$2,032,385
Independent Status or Filing Jointly with Spouse	81,292	$1,655,213
TOTAL	**137,685**	**$3,687,598**

Local Government Fund and Public Library Fund

Receipts from the personal income tax are deposited into the GRF. Under permanent law, a portion of GRF tax receipts are subsequently transferred to the Local Government Fund (LGF) and the Public Library Fund (PLF). Am. Sub. H.B. 153 (the operating budget act for FYs 2012 and 2013) fixed the LGF and PLF transfer amounts at pre-determined levels so that any increase (or decrease) in tax receipts during the biennium will affect the GRF only. For FY 2014 and subsequent years, transfers to the

[3] The remaining 0.2% of students are from households with incomes above $50,000, but their fiscal impact is negligible, and they are excluded from this analysis.

LGF and 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. Subsequent transfers to the LGF and PLF will be based on those respective ratios. The revenue loss to the local government funds on account of H.B. 167, which is predicated upon the maximum revenue loss for the Ohio income tax, would be indeterminable for future biennia, but likely to be up to $100,000 or more.

School district income tax

School district income taxes (SDIT) are based on either Ohio taxable income (OTI) of taxpayers residing in the school district or on the portion of that income that is earned income, generally limited to wages and self-employment income. School boards and voters of individual school districts choose whether to enact income taxes in their districts and which of these two tax bases to use. For school districts in which OTI serves as the starting point for calculation of school district income taxes, exclusion from Ohio adjusted gross income of Pell Grant and OCOG awards will reduce OTI and the school district income tax revenues derived from Ohio taxable income. Presently, 152 school districts levy an SDIT where OTI serves as the tax base, and approximately 11.4% of Ohio's taxable income is attributable to taxpayers in one of these 152 school districts. During FY 2010, school districts raised $250.6 million through school district income taxes where OTI serves as the tax base. The amount of the local revenue reduction for each respective school district depends on the number (if any) of Pell Grant and OCOG recipients living in that district who use the awards to pay room and board for a postsecondary student. The maximum revenue loss to school districts, which is predicated upon the maximum revenue loss for the Ohio income tax, would be a little more than $100,000.

HB0167EN / emr

Ohio Legislative Service Commission

Phil Cummins

Fiscal Note & Local Impact Statement

Bill: Am. S.B. 71 of the 129th G.A.

Date: June 7, 2011

Status: As Enacted

Sponsor: Sen. Manning

Local Impact Statement Procedure Required: Yes

Contents: Exempts from property tax municipally owned stadiums of independent professional minor league baseball teams

State Fiscal Highlights

- No direct fiscal effect on the state.

Local Fiscal Highlights

LOCAL GOVERNMENT	FY 2011	FY 2012	FUTURE YEARS
Avon Local School District			
Revenues	- 0 -	Loss of $209,050 per year	Growing losses in future years
Expenditures	- 0 -	- 0 -	- 0 -
Lorain County and other units of local government			
Revenues	- 0 -	Loss of $63,927 per year	Growing losses in future 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.

- Tax exemption for a stadium property owned by the city of Avon would result in loss of tax revenues for Lorain County and other units of local government.
- Tax revenue losses to Avon Local School District would not be partly offset by increased state foundation funding because of the amount of transitional aid that the district is already receiving.
- Revenue losses could be expected to grow in future years with rising property values.
- Other stadium properties might also qualify for this tax exemption in future years.

Detailed Fiscal Analysis

The bill would exempt from taxation all real property constituting a public recreation facility, including the land, that is owned by a municipal corporation and used primarily by an independent professional minor league baseball team for a significant portion of its home schedule, if the facility was constructed in 2008 or thereafter, the team operates at the facility under a lease, license, management agreement, or similar arrangement with the municipal corporation that requires the team to pay rent, revenue, or other remuneration to the municipal corporation, and any residual cash from the property that accrues to the municipal corporation is used for the public purposes of the municipal corporation. An independent professional minor league baseball team is defined as a baseball team that employs professional players and that is a member of an established league composed of teams that are not affiliated with major league baseball.

Only one stadium property in Ohio currently appears to qualify for this tax exemption, the All Pro Freight Stadium where the Lake Erie Crushers play their home games, in the city of Avon, in Lorain County. Opening day at the stadium was in June 2009. The stadium is in Avon Local School District.

As a result of the tax exemption for stadium property under the bill, a local government unit other than a school district would lose tax revenues equal to the decline in taxable value times the effective tax rate charged by the local government unit. Generally, when a school district's property valuation decreases, state aid increases. However, Avon Local School District is currently receiving enough transitional aid that the loss of tax revenues from the stadium property exemption would not increase state foundation funding to the district. Therefore, as with other local government units, Avon Local School District would lose tax revenues equal to the decline in taxable value times the effective tax rate, with no offsetting increase in state foundation funding. The Lorain County Joint Vocational School District would also be adversely affected.

The bill specifies that the tax exemption for the stadium applies to the tax years at issue in any application for exemption pending on the date that the bill's provisions go into effect. Tax revenue losses could be expected to grow in future years if property values rise, as they have in most years for properties on average in Ohio, or if effective tax rates increase.

The Lorain County auditor's office identified three parcels as part of the All Pro Freight Stadium property, owned by the city of Avon, and currently taxable. The auditor places a market value on these parcels of $26,022,200, and shows full year taxes for tax year 2010, payable in 2011, of $549,962. The stadium is located on one of the parcels, the parking lot for the stadium on a second parcel, and a local YMCA on the third parcel. If the YMCA is excluded, but the parking lot is included, full year taxes are $307,515. The stadium parcel is taxed at $266,472 per year. On the assumption that the parking lot for the stadium is considered part of the public recreation facility exempted from real property tax under the bill, but the YMCA is not, and based on millage information reported on the auditor's web site, the tax losses would be split approximately as follows: school district, $209,050; joint vocational school district, $9,138; county, $51,060; county health, $3,730; and city, $34,537. Netting the city's share of the tax receipts against the total tax obligation, Avon would save $272,978 per year if the property becomes tax exempt. The county's portion goes to developmental disabilities, $13,017; community college, $12,308; mental health, $6,713; children services, $5,595; metropolitan park, $4,849; the county general fund, $4,662; and smaller amounts to four other uses. A portion of these taxes, for bond and emergency levies to raise fixed sums of money, would be paid by other taxpayers if they were not paid by the city. If the foregoing assumptions are in error, actual taxes foregone as a result of the exemption might be either higher or lower.

In the future, stadiums of other teams in other locales might also qualify for this tax exemption, increasing the loss of revenue to units of local government.

SB0071EN / rs

Ohio Legislative Service Commission

Maggie Wolniewicz

Fiscal Note & Local Impact Statement

Bill: Sub. S.B. 117 of the 129th G.A.

Date: November 30, 2011

Status: As Enacted

Sponsor: Sens. Seitz and Schiavoni

Local Impact Statement Procedure Required: Yes

Contents: Modifies the state's power of attorney, trust, and probate laws and provides a mechanism for a probate court, under certain conditions, to order involuntary drug and alcohol treatment

State Fiscal Highlights

- By replacing "nonresident" with "resident" in the trust income tax law, the state could lose a minimal amount in tax collections annually that would have been credited to the General Revenue Fund (GRF).

Local Fiscal Highlights

- Probate courts could experience an increase in caseload and administrative costs to hear and determine petitions for involuntary drug and alcohol treatment, to train staff, to manage contempt of court proceedings including incarceration, and to provide court-appointed counsel if the respondent is indigent. The annual magnitude of those increased costs could exceed minimal for certain probate courts.

Detailed Fiscal Analysis

This fiscal analysis is organized around the following two topics: (1) trust and probate law changes and (2) court-ordered drug and alcohol treatment.

(1) Trust and probate law changes

The bill makes various changes to the state's trust and probate laws, most notably by enacting the Uniform Power of Attorney Act, modifying certain aspects of the Ohio Trust Code, modifying the anti-lapse statute regarding wills, and creating the anti-lapse statute for trusts. For the most part, these changes will not produce any significant direct fiscal effects for the state or any of its political subdivisions. To the extent that these changes produce any direct fiscal effects, they will be minimal and would likely consist of administrative costs for probate courts to apply and construe the Uniform Power of Attorney Act.

Changes to the trust income tax credit

Under the income tax law, some trusts are subject to the income tax on at least a portion of the trust's income. Trusts may claim a credit for taxes paid to another state on their accumulated qualifying nonbusiness income,[1] and the credit cannot exceed the amount of Ohio tax that would be imposed on that income. Am. Sub. H.B. 562 of the 127th General Assembly limited the income tax credit to "nonresident trusts," i.e., presumably a trust, or part of a trust, that is not a resident trust under applicable law defining "resident" trusts. The bill modifies the trust income tax law by replacing "nonresident" with "resident," thus providing this credit to resident trusts for income tax paid to other states or the District of Columbia. Based on current practice, and according to the Department of Taxation, this change to the trust income tax credit may result in a minimal annual decrease in tax revenues credited to the state's General Revenue Fund (GRF).

Tax formulas in wills and trusts

The bill allows the modification, following private agreement between parties, of the terms of a charitable trust (or a trust that has a charity as a beneficiary) on the disposition or division of property for trusts that do not refer to the repeal of the federal estate tax or the federal generation-skipping transfer tax and the potential effect of that

[1]"Nonbusiness income" includes compensation, rents and royalties from real or tangible personal property, capital gains, interest, dividends and distributions, patent or copyright royalties, or lottery winnings, prizes, and awards. The credit excludes "qualifying investment income" as defined in R.C. 5747.012.

repeal. (Ohio has a state estate tax but not a generation-skipping transfer tax.)[2] The bill specifies the rule of construction in wills and charitable trusts regarding the interpretation of the federal estate tax or generation-skipping transfer tax for distributions of benefits or allocation of charges (including transfer taxes) from estates or charitable trusts. Assuming that the modification of the terms of the trusts does not affect payment of state estate taxes where required and that, generally, charitable trusts have no or little state income tax liability, this provision is likely to have little state or local fiscal effects, if any.

(2) Court-ordered treatment for drug and alcohol abuse

Order for involuntary treatment

Probate courts could experience an increase in caseload and administrative costs to hear and determine petitions for involuntary drug and alcohol treatment, to train staff, and to manage contempt of court proceedings including incarceration. According to the Ohio Judicial Conference, costs incurred by probate courts to implement these provisions of the bill have the potential to be significant. Additionally, probate courts could incur costs to provide court-appointed counsel to indigent respondents. The bill does not address how a petition would be handled or who would pay for treatment and court costs in the case that the *petitioner* is indigent or otherwise unable to pay for treatment.

The bill provides a mechanism for probate courts, under certain conditions, to order involuntary drug and alcohol treatment by permitting a spouse, relative, or guardian of an individual experiencing alcohol or other drug abuse to file a verified petition with the court. The bill explicitly requires that any petition filed with the court contain a statement that the petitioner has arranged for treatment of the respondent and a statement from the treatment provider verifying the agreed upon arrangement in addition to the estimated cost. The bill further requires a security deposit for half of the estimated cost of treatment to be submitted with the petition along with a signed guarantee obligating the petitioner, or other authorized individual, to pay all costs of the respondent's treatment including related examination, court, and transportation costs.

The bill establishes a procedure for probate courts when determining whether an individual should be ordered to undergo drug and alcohol treatment including: (1) examining the petitioner under oath, (2) causing the respondent to undergo a physical evaluation and a drug and alcohol addiction assessment and diagnosis, (3) conducting a hearing, and (4) ordering treatment. If a *respondent* is indigent, the bill requires that court-appointed counsel be provided at the public's expense. The bill

[2] Am. Sub. H.B. 153 of the 129th General Assembly (the operating budget act for FYs 2012-2013) repealed the state estate tax for individuals dying on or after January 1, 2013. Thus, this provision may affect solely estates with date of death prior to January 1, 2013.

requires a probate court to dismiss the proceedings if the court determines that clear and convincing evidence has not been presented or if the petition is withdrawn. If a respondent fails to undergo treatment as ordered, the respondent is in contempt of court, which could involve respondents spending time in jail.

Involuntary hospitalizations

The bill allows the probate court, under certain conditions resulting from alcohol or other drug use, to order the respondent to be hospitalized for up to 72 hours. The bill precludes the respondent from being held in jail unless the probate court has previously found the respondent to be in contempt of court for failure to undergo treatment or failure to appear at an evaluation ordered by a probate court. Current law provides a similar process for involuntary hospitalization for psychiatric medical emergencies. Costs incurred by the probate court for psychiatric hospitalizations, including fees or expenses for police, sheriffs, physicians, witnesses, transportation, conveyance assistants, attorneys, referees, reporters, and court costs, are reimbursed by the Department of Mental Health. The bill is unclear as to whether probate courts would be entitled to reimbursement for similar expenses resulting from hospitalizations for alcohol or other drug use. If the local courts are liable for the expenses, the costs to certain county probate courts could easily exceed minimal.

List of hospitals and treatment providers

The bill requires each county board of alcohol, drug addiction, and mental health services to submit to the clerk of the probate court in each county served by the board, on at least an annual basis, a list of all hospitals and treatment providers that are able and willing to provide alcohol and drug services ordered by the probate court. The annual cost to provide such a list will be minimal at most.

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Appendix

All House Bills Enacted in 2011

House Bill	LIS Required?	Subject
1	No	Authorizes the creation of the JobsOhio nonprofit economic development corporation
5	No	Provides consolidated references to Revised Code sections that establish court costs and fees and generally clarifies and harmonizes certain provisions of the motor vehicle laws
9	No	Makes revisions to Uniform Commercial Code statutes
21	Yes	Qualifies Teach for America participants for a resident educator license
22	No	Modifies liability of owners of animals running at large
29	No	Increases the number of signatures required on, and revises the process for filing, a nominating petition for election to the Hamilton County Municipal Court and declares an emergency
30	No	Eliminates the requirement that school districts offer all-day kindergarten
36	No	Excuses up to five, instead of three, calamity days for the 2010-2011 school year, permits schools to make up days by lengthening remaining days in the year, and declares an emergency
54	No	Conforms the restoration of civil firearm rights with federal law and modifies the prohibition against "having weapons while under disability"
58	Yes	Incorporates income tax law changes to the Internal Revenue Code, creates a new, refundable job retention tax credit, temporarily extends the look-back period for purposes of state extended unemployment benefits, and declares an emergency
63	No	Modifies procedures governing judicial hearings for a pregnant minor to have an abortion
64	No	Adds five types of synthetic cannabinoids and six types of synthetic cathinones to the list of Schedule I controlled substances and provides for penalties, defines a controlled substance analog, and gives probation officers and bailiffs the same options as peace officers with respect to confidentiality of certain personal information
65	No	Designates certain memorial highways and bridges and creates the "Honor Our Fallen" license plate
78	No	Revises the criminal laws governing post-viability abortions
79	No	Prohibits qualified health plans from providing coverage for certain abortions
86	Yes	Establishes criminal sentencing and juvenile justice reforms
89	No	Designates the second full week of March as "Ohio Agriculture Week"
92	No	Establishes adult adoption procedures
93	No	Establishes and modifies the laws regarding the prevention of prescription drug abuse and modifies an employee's vacation entitlement under certain circumstances related to the privatization of a county hospital
95	Yes	Revises state energy policy principally to address natural gas price regulation
96	No	Requires the Superintendent of Public Instruction to establish a pilot project to provide early screening and intervention services for children with risk factors for dyslexia
114*	No	Makes transportation and public safety appropriations for the FY 2012-FY 2013 biennium
121	No	Modifies child custody and visitation rights of parents called to active military service
122	No	Exempts state surplus lines insurance from regulation in Ohio when Ohio is not the home state of the insured and to make other changes to the law regulating surplus lines insurance
123*	No	Makes appropriations for the Bureau of Workers' Compensation for the FY 2012-FY 2013 biennium
124*	No	Makes appropriations for the Industrial Commission for the FY 2012-FY 2013 biennium

House Bill	LIS Required?	Subject
128	No	Revises staffing ambulances and emergency medical services grants and fireworks license moratorium
133	No	Creates the Oil and Gas Leasing Commission and establishes a procedure for leasing state lands for oil and gas drilling
139	No	Renames the Northeastern Ohio Universities College of Medicine and Pharmacy
153*	No	Makes operating appropriations for the FY 2012-FY 2013 biennium
157	No	Modifies the law authorizing college preparatory boarding schools, permits an ESC to engage the services of a "dyslexia specialist" to provide training, makes other changes, and declares an emergency
163	No	Revises the coal mining law relative to surface disturbances, set-back distances, and alternative water treatment and supply requirements
167	Yes	Authorizes an income tax deduction for the otherwise taxable portion of a federal Pell Grant or Ohio College Opportunity Grant used to pay room and board for a postsecondary student
188	No	Establishes the Ohio Constitutional Modernization Commission
194	No	Makes various election law changes
209	No	Modifies certain requirements that apply to the deposit of public funds by the Treasurer of State and political subdivisions
218	No	Uses the compendia adopted by the U.S. Department of Health and Human Services to determine whether an insurer may exclude coverage for off-label drug usage and to revise the external review process used by health plan issuers
224	No	Permits uniformed services and overseas voters to request and receive absent voter's ballot applications and ballots by electronic mail or the Internet and makes other changes
225	No	Authorizes counties and townships to implement direct deposit payroll policies and makes other changes
229	No	Makes revisions to the laws governing agriculture
231**	No	Implements provisions of the Great Lakes-St. Lawrence River Basin Water Resources Compact by creating a water withdrawal and consumptive use permitting program
243	No	Revises certain provisions of the Liquor Control Law
250	No	Establishes requirements and procedures for issuing portable electronics insurance and to revise the order of distribution of claims from an insurer's estate as it relates to interest on the claim
277	No	Permits a horse racing permit holder who is eligible to become a video lottery sales agent to apply to the State Racing Commission to move its track to another location, and makes changes to casino law
302	No	Consolidates clerk positions in Miami County courts
318	No	Creates two primary elections in 2012 by moving the month in which presidential primary elections are held from March to June, and establishes filing procedures for petitions filed before and after the bill's effective date
319	No	Redraws Ohio's congressional districts and makes an appropriation
364	No	Establishes standards for securitization of costs for electric distribution utilities
369	No	Redraws Ohio's congressional district lines, establishes a single March 6, 2012 primary for all candidates for office, makes other related changes, and declares an emergency
371	No	Makes changes to the Local Government Innovation Program

* Exempt from Local Impact Statement Law.

** Vetoed by the Governor.

All Senate Bills Enacted in 2011

Senate Bill	LIS Required?	Subject
2	No	Creates a new business rule review procedure
4	No	Institutes performance auditing requirements for certain state agencies and makes an appropriation
5*	No	Revises the Public Employee Collective Bargaining Law and makes changes to compensation and terms of employment for public sector employees
17	No	Permits concealed carry in a liquor permit premises and in a motor vehicle, and expungement of prior convictions for improperly handling firearms in a motor vehicle that are no longer a crime under the bill
22	No	Permits EPA discretion with respect to sewerage system regulation
38	No	Designates May as "ALS Awareness Month"
71	Yes	Exempts from property tax municipally owned stadiums of independent professional minor league baseball teams
73	No	Allows manufacturers of nonbeverage food products to purchase beer and intoxicating liquor at wholesale
80	No	Designates a portion of United States Route 322 within Cleveland Heights as the "Officer Thomas F. Patton II Memorial Highway"
84	No	Repeals existing enforcement procedures pertaining to live musical performances and productions in Ohio, and substitutes a different form of enforcement procedures pertaining to Truth in Music
101	No	Designates May as "Substance Abuse Awareness and Education Month"
117	Yes	Modifies the state's power of attorney, trust, and probate laws and provides a mechanism for a probate court, under certain conditions, to order involuntary drug and alcohol treatment
120	No	Clarifies that the prosecuting attorney of a county is the legal adviser of all tax-supported public libraries
122	No	Establishes a new Interstate Compact for Juveniles
124	No	Modernizes Probate court statutes
132	No	Designates a future Interstate 90 bridge in Cuyahoga County as the "George V. Voinovich Bridge"
155	No	Establishes John Glenn Friendship 7 Day and declares an emergency
171	No	Implements the recommendations of the Sunset Review Committee and declares an emergency
187	No	Designates two memorial highways, renames a memorial highway, establishes maximum wheel and axle load limits for vehicles subject to vehicle weight allowances, and declares an emergency
264	No	Revises the law governing quality incentive payments and quality bonuses paid to nursing facilities under the Medicaid Program

*Overturned via ballot measure during the November 8, 2011 General Election.

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