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H.B. 150
(l_133_0728-8)
133rd General Assembly

# Fiscal Note & Local Impact Statement

Click here for H.B. 150's Bill Analysis

**Version:** In House Financial Institutions

**Primary Sponsor:** Rep. Merrin

**Local Impact Statement Procedure Required:** Yes

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## Highlights

- For purposes of the financial institutions tax (FIT), the bill eliminates the first $1 million of tax liability of new banks for three years. The revenue loss from this provision is dependent on bank creation. Any revenue decrease would affect the GRF, the Local Government Fund (LGF), and the Public Library Fund (PLF). During the FY 2020-FY 2021 biennium, state GRF tax revenue is distributed to the Local Government Fund (1.68%) and Public Library Fund (1.70%), while the GRF retains 96.62% of the revenue.
- The bill creates a new commercial activity tax (CAT) exclusion for the amount of the principal balance of a mortgage loan in case of gross receipts from the sale or transfer of a mortgage-backed security or mortgage loan. This provision may decrease CAT revenue by several millions of dollars, but LBO is unable to provide a more precise estimate due to a lack of data. CAT revenue is deposited primarily (85%) into the GRF; the remaining 15% is split between two tangible personal property tax replacement funds.

## Detailed Analysis

### Financial institutions tax

Continuing law levies the FIT on the basis of a financial institution's "total Ohio equity capital" (TOEC), defined to be the institution's total equity capital multiplied by the ratio of the institution's gross receipts attributed to doing business in Ohio to gross receipts generated anywhere; the gross receipts ratio described here is called the "apportionment ratio." TOEC is taxed under a three-tier rate structure: a rate of 0.8% (8 mills) applies to the first $200 million of a taxpayer's TOEC – Tier 3, a rate of 0.4% (4 mills) applies to total equity capital greater than $200 million but less than $1.3 billion – Tier 2, and a rate of 0.25% (2.5 mills) applies to TOEC greater than or equal to $1.3 billion – Tier 1. The minimum FIT is $1,000. In FY 2019, the FIT provided $202.4 million to the GRF. FIT returns for a tax year are filed in October of the tax year. However, financial institutions are required to make estimated payments in January, March, and May of the tax year, generally in one-third payments, with adjustments and other reconciliations by October of the tax year.

## Taxation of new banks under the bill

The bill eliminates for three years the first $1 million of the FIT tax liability of "de novo bank organizations." These are bank organizations that first began operations in the taxable year preceding the current tax year or in either of the two immediately preceding taxable years, according to the bill. The fiscal impact of this provision is dependent on the creation of new banks and the size of their TOEC. Any loss in GRF tax revenue would be borne in part by the Local Government Fund (LGF) and Public Library Fund (PLF). The LGF receives 1.68% of GRF tax revenue during the current biennium while the PLF receives 1.70%, and the GRF retains 96.62% under uncodified provisions of H.B. 166, the operating budget act. Under current law, each fund will receive 1.66% of GRF tax revenue, the percentage in codified law, beginning July 1, 2021, while the GRF share will increase to 96.68%.

Data from the Federal Deposit Insurance Corporation indicate that the number of commercial banks in Ohio has decreased in the last ten years. Similarly, data from the Ohio Department of Commerce show a general trend decline for the number of state-chartered banks. In addition, it is probable that any new bank would have a relatively low equity capital for purposes of the FIT. The bill specifies that "de novo banks" are not commercial activity tax (CAT) taxpayers and they would not become taxpayers merely by virtue of not paying the FIT for their first three years if the $1 million exemption reduces their tax liability to $0.

## Exclusion of CAT receipts for certain mortgage companies

The CAT is a business privilege tax measured by taxable gross receipts of a business and is generally paid by persons with more than $150,000 in taxable gross receipts in a calendar year. The CAT is not levied on excluded persons as that term is defined under R.C. 5751.01(E).[1] Also, not all revenue of firms is taxable and R.C. 5751.01(F) provides the list of exclusions to arrive at the taxable base for a variety of CAT taxpayers.[2] CAT revenue is deposited into the GRF (85%), the School District Property Tax Replacement Fund (13%), and the Local Government Tangible Property Tax Replacement Fund (2%).

The bill creates a new CAT exclusion in case of receipts from the sale or transfer of a mortgage-backed security or a mortgage loan by a mortgage lender holding a valid certificate of registration issued under Chapter 1322 of the Revised Code or by a person that is a member of

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[1] The CAT is not levied on excluded persons as that term is defined under R.C. 5751.01(E). An excluded person includes any person with not more than $150,000 in taxable gross receipts during the calendar year, except for a person that is a member of a consolidated elected taxpayer, and generally individuals or entities in industries that are subject to another state tax.

[2] For example, a real estate broker's gross receipts include only the portion of any fee for the service of a real estate broker that is retained by the broker and not paid to an associated real estate salesperson or another real estate broker.

the mortgage lender's consolidated elected taxpayer group.[3] In such sale or transfer, an amount equal to the principal balance of the mortgage loan would be excluded from the taxable base. This provision is likely to decrease annual CAT revenue by an uncertain amount, but probably by several millions of dollars per year.

Data reported by the Ohio Department of Taxation indicate that companies in the finance and insurance sector of the economy had an aggregate tax liability under the CAT of about $42.3 million in FY 2019. This sector would include mortgage companies, but also companies in some other lines of business; depository institutions (e.g., banks) would not be included because they pay the FIT, while insurance carriers would not be included because they pay the domestic or foreign insurance tax. But CAT payments by all mortgage companies that year, though likely less, could amount to as much as $25 million; CAT payments for mortgage brokers selling mortgage-backed securities or loans are probably well below that amount. However, LBO is unable to provide an estimate of the revenue loss due to the lack of data on the number of taxpayers or taxable gross receipts that may be excluded by the bill's provision.

# Synopsis of Fiscal Effect Changes

The substitute bill (l_133_0728-8) modified the provisions of the previous substitute bill (l_133_0728-3) as follows:

1. The latest version of the bill eliminates for three years the first $1 million of the FIT tax liability of "de novo bank organizations" instead of fully exempting the new banks from the FIT. The fiscal effect of this change depends on bank creation.
2. l_133_0728-8 also removes the provision related to the application fees charged by the Superintendent of Financial Institutions for approval to incorporate a state bank not exceeding the application fees charged by the federal Office of the Comptroller of the Currency (OCC) for approval of a federal charter. This change has no fiscal impact.
3. Finally, the new substitute bill creates a new CAT exclusion in case of receipts from the sale or transfer of a mortgage-backed security or a mortgage loan by a mortgage lender holding a valid certificate of registration issued under Chapter 1322 of the Revised Code or by a person that is a member of the mortgage lender's consolidated elected taxpayer group. The provision creates the majority of the revenue loss from the bill.

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[3] A consolidated elected taxpayer group is a taxpayer that has elected to file as a group including all entities that have either 50% or more common ownership or 80% or more common ownership. A major benefit of making this election is that receipts received between members of the group may be excluded from the taxable gross receipts of the group.