Ohio Legislative Service Commission

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Office of Research and Drafting

Legislative Budget Office

H.B. 436
134th General Assembly

Fiscal Note & Local Impact Statement

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Version: As Introduced

Primary Sponsors: Reps. Jordan and Carfagna

Local Impact Statement Procedure Required: Yes

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Highlights

- Exempting from the sales and use tax (SUT) purchases of tangible personal property and services by persons under contract with a port authority would reduce revenue to the GRF, Local Government Fund (LGF), and Public Library Fund (PLF). The statewide GRF fiscal impact will vary from year to year, and in some years may be in the low millions. Revenue to the LGF is distributed to counties, municipalities, townships, and certain special districts across the state. Revenue to the PLF is distributed primarily to public libraries across the state.
- Exempting these purchases from the SUT also removes them from the local permissive sales tax base, levied by counties and transit authorities, resulting in a loss of revenue to those local governments. Losses to local governments will also be variable.

Detailed Analysis

The bill provides a sales and use tax exemption on purchases of tangible personal property or services to persons under contract with a port authority. Under current law, tangible personal property that is permanently affixed to a building or structure is taxable as real property and is thus exempt from the sales and use tax (SUT). H.B. 436 expands this exemption to also include tangible property incorporated into a structure for the purpose of use by a tenant, equipment, machinery, and other tangible items used by contractors in the construction process, and it exempts all port authority contractors, not just those engaged in construction.

Additionally, the bill modifies a statute regarding the authority of certain port authority boards of directors to issue bonds. More specifically, the bill narrows that authority, specifying that the bonds must provide for the general costs of port authority facilities, provided the payment of such revenue bonds are sourced as specified in Chapter 4582 of the Revised Code.

Fiscal impact

Sales and use tax exemption

The bill's fiscal impact will depend on contracting practices among port authorities in Ohio. The bill reduces the size of Ohio's SUT base through the exemption offered to construction contractors and other service providers, and would reduce Ohio SUT revenue by amounts that would vary significantly from year to year. Published data on port authority expenditures on contractual services and non-land capital upgrades imply revenue losses that may be in the hundreds of thousands to low millions for the state, at Ohio's SUT rate of 5.75%. To provide a lower bound estimate of the revenue effect, total expenditures were multiplied by the percent of national gross industry output reinvested in capital equipment during calendar year (CY) 2019.[1]

Thus, H.B. 436 will reduce state revenue to the GRF, as well as the Local Government Fund (LGF) and Public Library Fund (PLF).[2] As a result of reductions in the SUT tax base, counties and transit authorities levying local sales taxes are also impacted by the bill. Generally, revenue from these local sales taxes are about 25% of statewide sales tax collections.

SUT impact: important considerations

LBO's analysis of the fiscal impact is based on the assumption that the bill's exemption base includes purchases by *only* the persons which provide contractual services *directly* to a port authority.[3] An analysis of audited financial reports suggests contractual services expenditures in this category vary widely from year to year and from port to port. Among port authorities who regularly undergo and publish a full financial audit, annual expenses in the range of $10,000 to $300,000 are not uncommon. The state's largest port authorities incur expenditures in the millions, or tens of millions, on such contracts. LBO communication with some port authorities verifies expenditures in this range, though port officials were unable to comment on their contractors' investments in tangible personal property and services.

Less clear at this time is the extent to which the bill's exemptions will apply to major construction contracts financed through port authority bond issues on behalf of developers. Should the ports be signatory on the majority of these contracts, Ohio's SUT base will be further affected. Under those specified circumstances, the potential revenue loss from the bill may be larger than the estimated range provided above.

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[1] Expenditures on contractual services and non-land capital upgrades were obtained from reports filed with the Ohio Auditor of State. Gross industry output, a measure of total business revenue, is published by the U.S. Bureau of Economic Analysis. Investment in capital equipment was obtained from the 2019 Annual Capital Expenditures Survey, and includes all industries. Total capital expenditures on equipment divided by gross national output yielded a likely lower bound of approximately 2.9% of port authority expenditures in CY 2019.

[2] Under an uncodified provision of H.B. 110 of the 134th General Assembly, the PLF receives 1.70% of GRF tax revenue during the current biennium; the PLF percentage of revenue will revert to 1.66% in July 2023. The share of revenue to the LGF is 1.66%, as set in codified law.

[3] Services are considered operating expenditures, and depending on the reporting authority could include legal, construction/maintenance, professional/consulting, cleaning, or other services provided by persons not employed directly by the port authority.

Port authority bond issues

H.B. 436 modifies a statute governing the possible use of bond revenues by port authorities. In particular, narrowing somewhat the allowable purposes for issuing bonds, may limit debt-financed resources for such port authorities compared to resources available to them under current law. This provision will not have a direct fiscal impact on the state.

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