OHIO LEGISLATIVE SERVICE COMMISSION

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Fiscal Note & Local Impact Statement

Bill: S.B. 235 of the 131st G.A. **Date**: December 27, 2016

Status: As Enacted (Certain items vetoed) **Sponsor**: Sens. Beagle and Coley

Local Impact Statement Procedure Required: Yes

Contents: Changes to various state programs

The bill makes various changes affecting the operation of state programs. Major headings include (1) Tax Provisions, (2) Unemployment Compensation Law, (3) the Department of Commerce, and (4) Local Government Provisions. If a provision affects more than one agency, it is listed only under the agency primarily affected.

Certain provisions of S.B. 235 were vetoed by the Governor. Specifically, the Governor vetoed two sales and use tax exemptions and an appropriation within the Development Services Agency (DSA). One sales tax provision provided a new exemption for the sale of digital audio works from a jukebox, arcade machine, or similar amusement or entertainment device. The other vetoed sales tax provision expanded the scope of the existing exemption for tangible personal property used in producing oil and natural gas. Within the DSA budget, the Governor vetoed a provision that reappropriated the unencumbered, unexpended balance of a GRF-funded grant for a major sports event.

Detailed Fiscal Analysis

Tax provisions

The provisions begin with those that potentially may affect GRF revenue. One of these tax provisions seems likely to reduce GRF revenue, but LSC does not have an estimate of the magnitude of the revenue loss. The other tax provisions affect local government tax sources, including property taxes and municipal income taxes.

Financial institutions tax

The bill exempts small business investment companies (SBICs) from the financial institutions tax (FIT). SBICs are privately owned and managed investment funds licensed under federal law. An SBIC uses its own capital and, in most cases, securities guaranteed by the United States Small Business Administration (SBA) to lend to and make equity investments in qualifying small businesses.

The exemption in S.B. 235 applies both retrospectively back to January 1, 2014, when the FIT was enacted, and prospectively. This implies SBICs that previously paid the FIT would be eligible to receive refunds. Any financial institution that is subject to the FIT is exempted from the commercial activity tax (CAT), which is a general tax on the gross receipts of all businesses not expressly exempted from that tax. Thus, by operation of law, SBICs would become subject to the CAT at a rate of 0.26% of taxable gross receipts, if they are exempted from the FIT. However, SBICs are structured in such a way that the bulk of their income is investment income distributed to partners. Investment income generally is not subject to the CAT. SBICs may also have some income as management fees but, to be taxable under the CAT, fees received would have to be at least $150,000 per year. No information is publicly available on potential fee revenue to SBICs.

The exemption from the FIT will reduce revenues to the GRF by an uncertain amount. Assuming SBICs have paid the FIT tax for tax year (TY) 2014, TY 2015, and TY 2016, amounts refunded may be several millions of dollars. The exemption will also result in foregone GRF revenue in future years, depending on the level of equity capital of SBICs. Assuming gross receipts from SBICs are taxable under the CAT, revenue from this tax is likely to be relatively small, as most of the income to SBICs is typically excluded from the CAT tax base. Thus, on balance, the bill's provision would result in a net reduction of GRF revenues of unknown magnitude.

Sales tax exemption certificate

The bill requires purchasers of employment services to provide an exemption certificate to the service provider if the transaction is not subject to sales and use tax. This provision will have no fiscal effect.

Catalytic historic rehabilitation tax credits

The bill authorizes historic rehabilitation tax credits for certain prior applicants for the current biennium. It also provides that the Director of the Development Services Agency (DSA) must not approve an application for a rehabilitation tax credit certificate for a catalytic project during the state fiscal biennium beginning July 1, 2017, and any biennium thereafter.

H.B. 483 of the 130th General Assembly authorized the Director of DSA to issue one "catalytic" rehabilitation tax credit of up to $25 million per biennium to a large-scale rehabilitation project that will foster significant economic development. Current law also requires DSA not to approve more than $60 million of rehabilitation tax credits per fiscal year,[1] but the Director may reallocate unused tax credits from a prior fiscal year for new applicants and such reallocated credits do not apply toward the yearly dollar limit above.

[1] The Ohio Historic Preservation Tax Credit Program, which is administered by DSA, provides a state tax credit up to 25% of qualified rehabilitation expenditures incurred during rehabilitation projects.

S.B. 235 requires DSA to approve as eligible to receive a rehabilitation tax credit certificate, the catalytic project of each person that applied for but was not approved for a catalytic rehabilitation tax credit for the fiscal year 2016-2017 biennium, or received a tax credit for less than 25% of the qualified rehabilitation expenditures. The amount of credit awarded to these prior applicants would be equal to the lesser of 25% of the qualified rehabilitation expenditures, $25 million, or one-half of the maximum amount of credit that could have been claimed by the owners of "uncompleted projects"[2] had DSA issued rehabilitation tax credit certificates to each such owner based on qualified rehabilitation expenditures paid or incurred. Though a credit awarded under this provision is not subject to the limitation on the number of tax credit certificates issued during a biennium, S.B. 235 specifies that the amount of tax credits awarded is part of tax credits approved for purposes of the $60 million fiscal year limit.

The discontinuation of the approval of catalytic tax credits during the state fiscal biennium starting July 1, 2017 or during any state fiscal biennium thereafter has no fiscal effect. Requiring DSA to authorize tax credits for certain prior applicants of uncompleted projects may result in GRF losses only if DSA was not planning to authorize all available tax credits under existing law. However, assuming the $60 million limit per year in existing law would be reached with or without the credits authorized under this provision of the bill, the provision would have no overall fiscal impact on the GRF, except for the timing of credit claims on a particular fiscal year.

Motion picture tax credit

The bill authorizes a television program produced in Ohio during the first six months of calendar year 2017 to be a tax credit-eligible production for FY 2018 even though the production commenced before the start of that fiscal year. A credit awarded under this provision must not exceed $12 million and cannot be claimed before July 1, 2017.

The Ohio Motion Picture Tax Credit provides a refundable tax credit against the CAT, FIT, or personal income tax for motion pictures produced in Ohio. Continuing law caps the amount of allowable tax credits at $40 million per fiscal year. The bill's provision does not have a fiscal effect because the provision counts credits awarded under its authority against the FY 2018 cap.

Tax exemption for the increased value of property

S.B. 235 applies to real property that meets the bill's definition of "newly developable property" or "redevelopment property." In both instances, the exemption generally applies to parcels on which one or more commercial or industrial buildings or structures have not yet been issued their certificates of occupancy or otherwise used for

[2] "Uncompleted projects" means an historic building, the rehabilitation of which the Director of Development Services approved under former section 149.311 of the Revised Code as it existed on April 2007, presumably during the application period in FY 2008, but the owners of which were not awarded a rehabilitation tax credit certificate.

commercial, agricultural, or industrial operations. Please refer to the LSC Bill Analysis for the additional details of S.B. 235 and how the term "newly developable property" differs from that of "redevelopment property." The bill requires a legislative body, before adopting an ordinance or resolution granting a property tax exemption, to notify the board of education of any traditional or joint vocational school district and, if the legislative body is a board of township trustees or board of county commissioners, to notify the board of county commissioners or board of township trustees, respectively, in which the parcel is located.

A large number of parcels could be eligible based on the bill's criteria for receiving the exemption. However, eligibility is restricted to those properties for which there are no outstanding real property taxes, assessments, penalties, or charges that are due and unpaid. Therefore, a property owner must obtain a certificate from the county treasurer to prove this condition has been met. Moreover, to be eligible, an owner must file a written declaration with the county auditor of the county in which the property is located attesting to each of the following:

1. That the property is newly developable property or redevelopment property;
2. If the property is newly developable property, that the property's zoning regulations will permit construction of a new commercial or industrial building or structure;
3. If the property is redevelopment property, that the property's zoning regulations will permit construction or reconstruction of a new commercial or industrial building or structure.

Based on these parameters, it is conceivable that substantial amounts of newly developable property and redevelopment property in Ohio that is not already under another more beneficial tax incentive agreement (e.g., tax increment financing or Community Reinvestment Area) could benefit from this exemption if the property owner successfully gains the approval of a legislative body of the local subdivision.[3] S.B. 235 requires the legislative body of a political subdivision receiving the property owner's declaration to determine whether the subject of the application is a public purpose that merits a property tax exemption.

If the parcel owner meets all of these above listed conditions, the owner will not pay taxes on their increase in value until a certificate of occupancy is issued to the property owner.[4] This property tax exemption on the increased value can continue for

[3] If the property currently benefits from a tax increment financing (TIF) district, the parcel owner must direct their application to the corporation, township, or county that authorized that TIF exemption.

[4] The tax exemption ceases if the owner transfers title to the property to another person, but it appears that the new owner could seek an exemption for the property if the zoning remains the same and the new owner has not yet obtained a certificate of occupancy for the building or structure nor conducted any commercial, agricultural, or industrial operations.

six consecutive years. The bill includes provisions for a recoupment charge in specified circumstances.[5] The recoupment charge would be the amount of the reduction in property taxes charged due to the exemption in the three most recent years.

The exemption would cause temporary revenue losses – albeit permissive for the jurisdiction that grants the exemption – from tax levies within the Ohio Constitution's 1% limitation (i.e., unvoted levies or inside millage). These types of levies are not subject to tax reduction factors, so the effective tax rates are not lowered in response to the growth in property values (or raised in response to decreases in value). Therefore, exempting (albeit temporarily) the increased value of certain types of property reduces the tax base for entities benefitting from inside millage levies. The magnitude of this local revenue loss depends on a variety of factors, including the incidence of commercial and industrial construction as well as the increased value of affected property. The bill makes the tax exemption available for tax year 2017 and every year thereafter, affecting revenues for school districts, counties, municipalities, townships, and other political subdivisions beginning in FY 2018.

Impact of net operating loss carryforwards

The bill modifies the formula that a municipal corporation must use to report the financial impact of the requirement in existing law that the municipal corporation allow net operating loss (NOL) carryforwards. All reports are submitted to the Municipal Income Tax Net Operating Loss Review Committee, which is codified by the bill.[6] When estimating financial impacts, the municipal corporation must use a microsimulation model adopted by the Committee on May 5, 2016, and apply the model to taxable years ending in 2018 and 2019. The Committee is to issue a written report on or before May 1, 2022, after which it ceases to exist. This provision is likely to have a minimal fiscal effect on municipalities.

H.B. 5 of the 130th General Assembly revised the laws governing the Ohio municipal income tax. It requires all municipal corporations to allow NOLs to be carried forward for five years, for NOLs incurred in taxable years beginning after 2016. Though most municipalities allowed NOLs with varying carryforwards, a number of municipalities disallowed net operating losses. Those municipalities would experience reduced tax revenue from the NOL provision, with the amount of the loss dependent on the extent of the resulting reduction in municipal taxable income from businesses and individuals. H.B. 5 created a committee to study and quantify the potential fiscal impact of the five-year NOL carryforward requirement included in H.B. 5. The Committee was to analyze revenue data, and municipalities that levy an income tax were required to

[5] The recoupment charge is triggered if (1) the owner transfers title to the property without making any improvements, or (2) commercial, agricultural, or industrial operations commence on the property before the owner obtains a certificate of occupancy.

[6] The Committee was originally established in an uncodified section of H.B. 5 of the 130th General Assembly In addition to codifying the Committee, this bill repeals that section of H.B. 5.

provide specified information about revenue losses from NOLs to the Committee. The Committee must report its findings on the revenue effect of the NOL provision, including recommendations to address revenue shortfalls.

Downtown redevelopment district

The bill deletes language prohibiting a downtown redevelopment district (DRD) from including a parcel that "has been" tax-exempt as part of a municipal tax increment financing (TIF) district.[7] The prohibition is retained for a parcel in a TIF district on the effective date of the ordinance creating the DRD. Thus, a parcel that was part of a TIF in the past but not currently may be included in a DRD. The fiscal effect of this change will likely be inclusion of such a parcel or parcels in one or more DRDs in the state. This would allow service payments in lieu of property taxes (PILOTs), rather than tax payments, for some portion of the taxes otherwise due on these parcels.

Under the DRD law, municipal corporations may redevelop commercial and mixed-use commercial and residential areas of no more than ten acres. PILOTs from DRDs may be applied to more uses than TIF funds, including awarding grants and loans to owners of historic and other properties in the district. Creation of DRDs may result in loss of tax revenues for some units of local government.

Unemployment Compensation Law

S.B. 235 modifies Unemployment Compensation Law to increase the taxable wage base from $9,000 to $9,500 and freezes the maximum weekly benefit amount (MWBA) to claimants for calendar years 2018 and 2019 at the 2017 level. In 2020, the taxable wage base would decrease back to $9,000 and the MWBA would be unfrozen. In doing so, the bill decreases benefits disbursed to claimants from the Unemployment Compensation Fund (the Fund) and increases contributions from employers to the Fund during CY 2018 and CY 2019. As public employers, the state and local governments reimburse the Fund for any benefits paid to their workers. The bill's provision, therefore, would likely reduce the governments' expenditures for these reimbursements.

Department of Commerce

Oversight of rock climbing facilities – insurance certification

The bill excludes certain "manufactured rock climbing walls in climbing facilities" from inspection by the Department of Agriculture's (AGR) Division of Amusement Ride Safety. Climbing walls that will continue to be inspected by AGR are in climbing facilities that are located in amusement parks, carnivals, or public land. The Division is entirely funded through the Amusement Ride Inspection Fund (Fund 5780), which consists of the proceeds from permit fees and fines.

[7] R.C. 5709.45.

The bill declares that the General Assembly finds that defining the duties and responsibilities of climbing facility operators and climbers is in the public interest. Consequently, the bill requires a climbing facility operator that does not fall under the inspection of AGR to maintain liability insurance and file a certificate proving such coverage with the Department of Commerce. It additionally requires the climbing facility operator to comply with all manufacturer instructions and requirements regarding the manufactured climbing wall, including the inspection of the wall. As a result, the bill places the burden of maintenance and inspections on climbing facility operators while also exempting them from liability for injuries under specified circumstances. The rock climbing facility exemptions in the bill will have little, if any, direct fiscal effect on state and local governments.

Ohio Pawnbroker's Law

The bill makes various changes to the Ohio Pawnbroker's Law that do not have a significant fiscal effect on state and local government. The changes made by the bill include modifying the minimum amount of liquid assets held by a pawnbroker, the maximum percent of interest charged for any loans issued, and the number of continuing education hours and standards required for pawnbroker employees. The Consumer Finance section of the Division of Financial Institutions within the Department of Commerce enforces the Ohio Pawnbroker's Law. A pawnbroker license has an initial investigation fee of $200 and a biennial license fee of $800. Fifty percent of the licensing fee is used by the state and the other 50% is distributed to the municipal corporation or county in which the office of the licensee is located. The fees are deposited into the Consumer Finance Fund (Fund 5530). In FY 2016, approximately $164,000 was deposited into Fund 5530 from pawnbroker license fees.

Local government provisions

Hospital board meetings

The bill allows boards of county hospital trustees, boards of governors of municipal hospitals, and boards of hospital commissioners to conduct meetings by communications equipment such as teleconference or video conference. The bill requires the boards to adopt rules designating the communications equipment that is authorized for use and rules to establish procedures and guidelines for using authorized communications equipment. Public hospitals could realize a minimal increase in costs to adopt the specified rules.

Pilot water and sewer program

The bill authorizes the legislative authority of a municipal corporation in Stark County, in FY 2017–FY 2018, to conduct a pilot program using up to 5% of the aggregate total of funds deposited into water-works or sewer funds for extending water and sewer systems if (1) the water or sewerage system is being extended to areas for economic development purposes, and (2) the areas into which the system is being extended are the subject of a cooperative economic development agreement. This would

allow the municipal corporation to use additional sources of revenue to fund work on any such qualifying project.

Animal owners' liability

The bill applies the law governing animals running at large to all poultry rather than only to geese. Under current law, an owner or keeper of horses, mules, cattle, sheep, goats, swine, llamas, alpacas, or geese can be held both criminally and civilly responsible for permitting an animal to run at large. Under the bill, a violation of the criminal prohibition remains a misdemeanor of the fourth degree.

This change may result in an increase, expected to be negligible, in locally collected state court costs credited to the Indigent Defense Support Fund (Fund 5DY0) and the Victims of Crime/Reparations Fund (Fund 4020). Similarly, local criminal and civil justice system costs may rise by a minimal amount, offset to some degree by court fees and fines. County, municipal, and township law enforcement entities may recover from the owner or keeper some or all of the expenses incurred in the taking and keeping of poultry found running at large.

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