OHIO LEGISLATIVE SERVICE COMMISSION

Russ Keller

Fiscal Note & Local Impact Statement

Bill: H.B. 133 of the 132nd G.A.

Status: As Enacted

Sponsor: Rep. Ryan

Local Impact Statement Procedure Required: Yes

Subject: Exempts out-of-state disaster relief businesses and employees from certain taxes and laws

State & Local Fiscal Highlights

- The bill authorizes certain tax and licensing exemptions for out-of-state businesses and out-of-state employees that perform disaster relief work on certain infrastructure items. Therefore the bill will likely decrease certain state and local tax and licensing revenue streams.
- The bill will likely decrease state and municipal personal income tax revenue, municipal net profits tax revenue, commercial activity tax revenue, state and county and transit authority use tax revenue, revenue to the Workers' Compensation State Insurance Fund, revenue to the Unemployment Compensation Fund, corporate and business license fee revenue, and possibly occupational license revenue.
- The timing and amount of the revenue decreases and the particular local revenue streams affected will depend on the future experience of declared disasters in Ohio, which is inherently unpredictable, and the proportion of relief work done on critical infrastructure by out-of-state businesses.

Detailed Fiscal Analysis

The bill exempts out-of-state disaster businesses[1] and out-of-state employees[2] from various state and local taxes and licensing requirements resulting from work done on property and equipment of a public utility, commercial mobile radio service provider, cable service provider, or a video service provider during a declared disaster. At least 26 states have enacted similar legislation, which was adopted by the NCSL

[1] To qualify as an out-of-state disaster business, a business must have received a written solicitation from a qualified party to perform the work, and also must not have been subject to Ohio income taxation, or taxation under the commercial activity tax, during the calendar year preceding the disaster response period, other than for additional qualified disaster work, or as a related entity of another taxpayer.

[2] An out-of-state employee may be an employee of an out-of-state disaster business or of a company which owns or uses qualified property and equipment (e.g., a public utility or cable service provider), and must not have done any nondisaster work in Ohio during the period beginning with the preceding calendar year and ending at the disaster response period.

Executive Committee Task Force on State and Local Taxation. Fiscal effects of the bill will be determined by future disaster experience, and the proportion of work done during the disaster period by out-of-state disaster businesses and qualifying out-of-state employees.

While it is impossible to know Ohio's future experience of disasters, in the last 25 years beginning in 1992, Ohio has experienced 30 events which were declared emergencies by the Governor or the President of the United States, an average of 1.2 per year. Total public funding provided in the aftermath of each disaster ranged from $2.1 million to $155.1 million, with a median amount of $16.6 million.[3] It is unknown how much of those funds were used to restore property and equipment of public utilities, commercial mobile radio service providers, cable service providers, or video service providers, or how much of the work was done by out-of-state businesses and employees.

Under this bill, the following state and local revenue streams will be affected when work is done by out-of-state disaster businesses and out-of-state employees during future declared disasters in Ohio:

State and municipal personal income tax

Any individual income earned by out-of-state employees during the course of their work on disaster relief is exempt from state and municipal income tax. Any income earned by out-of-state disaster businesses which are pass-through entities is also exempt. Therefore this provision of the bill will decrease state personal income tax revenue which will primarily affect the GRF, the Local Government Fund (LGF), and the Public Library Fund (PLF). The bill will also decrease municipal income tax revenue to any municipalities in which work is done and a municipal income tax is levied.

The bill also amends the existing guidelines for remitting quarterly estimated payments under the state income tax. H.B. 133 makes explicit that each of four estimated tax payments, in combination with amounts withheld and prior year refunds applied to payment of current year taxes, is to total at least the amount of a "required installment" defined as 25% of the lesser of (1) 90% of tax liability for the taxable year, or (2) 100% of tax liability for the preceding taxable year. This provision may alter the timing of payments owed or payments made for some taxpayers but not the total amount of taxes owed. The amount of interest penalties owed may change, but LSC has no basis for estimating any such changes. Amounts involved are relatively small; the income tax yielded less than $3.0 million in interest penalties for the most recent year for which data are available.

[3] Data on declared emergencies in Ohio and the public funding provided are from the Ohio and Federal Emergency Management Agencies.

Commercial activity tax and municipal income net profits tax

All gross receipts earned by out-of-state disaster businesses during the course of disaster work are exempt from the commercial activity tax (CAT) and all corresponding income is exempt from any municipal income net profits tax, therefore the bill will decrease such revenue. CAT revenue is primarily distributed to the GRF, the School District Tangible Property Tax Replacement Fund, and the Local Government Tangible Property Tax Replacement Fund.

State and county and transit authority use tax

The use of property and equipment in Ohio by an out-of-state disaster business is exempt from state and local use tax as long as the equipment is removed from the state by 60 days after the disaster declaration expires. The fiscal effect of this exemption may be small since the use of much public utility property is already exempt from the use tax and since under current law, Ohio only taxes the use of property and equipment to the extent that Ohio's rates exceed the rates of the jurisdiction where tax on the property or equipment has already been paid. However, in some instances the bill will still decrease state and local sales and use tax revenue. Sales and use tax revenue is deposited into the GRF, and a portion is subsequently transferred to the LGF and the PLF. Any county or regional transit taxing authority where the disaster work takes place would also lose use tax revenue.

Workers' Compensation and unemployment compensation insurance

Employers are not required to pay Workers' Compensation premiums for an out-of-state disaster employee whose only work in the state is disaster work. Those out-of-state employees are also not eligible to make a claim on the Workers' Compensation system in the event of an injury. Therefore the bill would result in less premium paid into, and a reduction in benefits paid out of, the State Insurance Fund.

Similarly, under the bill employers are not required to pay the state portion of the unemployment insurance tax for out-of-state disaster employees and those employees are not eligible to receive unemployment benefits in Ohio. Therefore the Unemployment Compensation Fund will receive less revenue and a potential reduction in benefits paid out under this bill.

Corporate/business filing and occupational license revenue

The bill exempts out-of-state disaster businesses and out-of-state employees from any business filing and occupational licensing requirements that would be made for the sole purpose of disaster work in the state. This will result in a decrease of revenue to the Business Services Fund (Fund 5990) and the Occupational Licensing and Regulatory Fund (Fund 4K90).