Ohio Legislative Service Commission

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H.B. 257

131st General Assembly

(As Introduced)

Reps. Becker, Brinkman, Retherford, Roegner, Vitale, Young, Zeltwanger

BILL SUMMARY

General tax provisions

- Repeals the state income tax, via a five-year phase-out.
- Concurrently phases-out, over five years, a taxpayer's ability to claim most income tax deductions, exemptions, and credits.
- Modifies the computation of the joint filer income tax credit to ensure that joint filers do not pay more combined tax on their joint return than they would if they filed separate returns.
- Authorizes a husband and wife to elect to file either separate state income tax returns or a joint state income tax return regardless of their federal filing status.
- Excludes from sales and use taxation the portion of the price of an item that represents a "core" charge.

Hydrocarbon severance taxes

- Repeals a cost recovery assessment imposed on a well's owner for the severance of oil and gas.
- Increases the rate of severance tax levied on oil and gas severed by a nonhorizontal well up to the combined rate of the repealed cost recovery assessment and current law's rate of severance tax on oil and gas.
- Exempts from severance tax any gas severed from a nonhorizontal well producing an average of 10 Mcf of gas per day or less or an exempt domestic well, but subjects the owners of most such wells to a $60 annual fee.

- Levies a new value-based severance tax on oil, gas, condensate, and natural gas liquids (NGLs) severed from or collected from oil or gas severed from a horizontal well based on the volume of the resource severed or collected.
- Divides revenue from the new tax among oil and gas regulatory functions of the Department of Natural Resources (DNR), the General Revenue Fund, and local governments in areas of the state with drilled horizontal wells or oil and gas shale development.
- Creates the 13-member Ohio Shale Products Regional Commission to make grants to local governments in the shale region one-half of the revenue from the new tax allocated for local governments.
- Commits one-half of the revenue administered by the Commission to an endowment fund that cannot be used until 2025.
- Eliminates a severance tax exemption for severed resources used to improve the severer's homestead.
- Transfers the severance permit responsibilities from the Department of Taxation to DNR.
- Adjusts the due dates of severance tax returns.
- Requires severance tax revenue to be credited to funds on a monthly, rather than quarterly, basis.
- Limits the ability of DNR to disclose severance tax information received by the Tax Commissioner.

Public employee retirement and re-employment

- Creates a new re-employment penalty for a public retirement system member who retires on or after the bill's effective date and becomes employed in a position covered by the Public Employees Retirement System (PERS), Ohio Police and Fire Pension Fund (OP&F), State Teachers Retirement System (STRS), or School Employees Retirement System (SERS).
- Causes a retirant who is subject to the new penalty to forfeit the pension portion of the retirement allowance and have the annuity portion suspended during the period of employment.

- Provides for the retirement allowance to resume the month following termination of employment and for the suspended portion of the allowance to be used to recalculate the retirement allowance after employment ends.

- Eliminates the current re-employment penalty for a PERS retirant who was an elective official and returned to the same office and, depending on the date of retirement, subjects the retirant to the bill's re-employment penalty or the existing two-month benefit forfeiture.

- For members retiring before the bill's effective date, retains current law's re-employment penalties that apply to (1) a retirant who has received a retirement allowance for less than two months when re-employment commences or (2) a PERS retirant who is employed as an independent contractor.

Expansion of qualified immunity for volunteer health care workers and facilities

- Expands the existing civil immunity for harm that allegedly arises from an action or omission of certain volunteer health care workers and facilities in the provision of health care to an indigent and uninsured person.

Medicaid coverage of expansion group

- Prohibits the Medicaid program from covering the expansion group authorized by the federal Affordable Care Act and reduces certain Medicaid appropriation items to eliminate funding for the expansion group.

Abortion limitations

- Requires the Ohio Department of Health to ensure that state funds and certain federal funds are not used to perform or promote elective abortions, or to contract or affiliate with any entity that performs or promotes such abortions.

Appropriation reductions

- Reduces aggregate General Revenue Fund appropriations for the current fiscal biennium for certain agencies.

- Requires the Director of Budget and Management to annually determine reductions to individual appropriation items in a manner that preserves critical state services.

- Exempts certain items used for debt service, property tax reimbursement, and Medicaid payments from the bill's appropriation reductions requirements.

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CONTENT AND OPERATION

Tax provisions

Overview

The bill phases out the income tax over five years, addresses the income tax "marriage penalty," exempts core charges from sales and use tax, and changes the

manner in which oil and gas is taxed under the severance tax. Because the bill was introduced in June 2015, it does not reflect changes in tax law made since then, principally with respect to the income tax, as noted below.

Income tax repeal

The bill phases-out the state income tax. The phase-out – drafted before rate cuts were adopted in H.B. 64 – was scheduled to begin with the 2015 taxable year. Compared to the 2014 taxable year, tax rates would decrease by roughly 7% in the 2015 taxable year, 12% in the 2016 taxable year, 41% in the 2017 taxable year, and 71% in the 2018 taxable year. No income tax would be levied after 2018.[1]

Phase-out of deductions, exemptions, and credits

The bill concurrently phases-out a taxpayer's ability to claim most income tax deductions, exemptions, and credits. The phase-out matches the income tax rate reductions, such that, in the 2015 taxable year, a taxpayer would have been allowed to claim only 93% of the deductions, exemptions, and credits otherwise allowed by law, then 88% of such amounts in the 2016 taxable year, and so on. The bill also states that a taxpayer may claim 50% of any deductions, exemptions, and credits allowed in the 2019 taxable year, even though no income tax would be levied in that year.

Under continuing law, certain tax credit laws allow a taxpayer to choose to take the credit against one tax or another, but not both. For example, the Job Creation Tax Credit may be claimed against the income tax, the commercial activity tax, or one of a few other business taxes. The bill specifies that, if a taxpayer claims such a credit against the income tax but is unable to use the full amount because of the phase-down, the taxpayer may apply any remaining credit amount against any other tax the taxpayer might owe so long as the credit is allowed against that tax.[2]

Pass-through entity withholding tax rate phase-out

The bill also phases down the pass-through entity withholding tax rate for certain nonresident owners of pass-through entities (PTEs). Under continuing law, the income tax applies to income received by the owner or investor of a PTE from the PTE's business activities in the state. In order to ensure collection of this tax from nonresident investors, the PTE is required to withhold taxes on behalf of such investors.

The current withholding rate for nonresident individual investors in PTEs that file a Form 1140 withholding tax return is 5%. The bill reduces this 5% withholding rate

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[1] R.C. 5747.02.

[2] R.C. 5747.027.

to 4.7% for the 2016 taxable year, 3.5% for the 2017 taxable year, and 1.6% for the 2018 taxable year. No withholding is required after 2018, when the withholding tax is repealed.[3]

State income tax for married couples

Ohio taxes most income under a single graduated rate structure.[4] Taxpayers owe the same rate for any given level of taxable income regardless of joint or separate filing status. As a result, a married couple filing a joint Ohio return may have more income subjected to a higher marginal tax rate than an individual taxpayer filing a separate return. For example, if each spouse has $40,000 in taxable nonbusiness income in2016, each spouse would be subject to a top marginal rate of 2.969% if they file separate returns. If the couple files a joint return, they would be subject to a top marginal rate of 3.465%. This result of joint filing status is sometimes referred to as the "marriage penalty."

The bill allows married taxpayers to avoid the marriage penalty by revising the joint filing credit and permitting couples to choose between filing either separate state income tax returns or a joint state income tax return regardless of their federal filing status.

Joint filing credit

Under current law, a married couple that files a joint return qualifies for a joint filing credit if each spouse has a modified adjusted gross income of at least $500. (For this purpose, modified AGI is generally equivalent to a taxpayer's earnings, plus business income in excess of $250,000.) The credit equals a percentage of the spouses' taxable income – ranging from 20% for couples with a combined taxable income of $25,000 or less to 5% for couples with a combined taxable income of $75,000 or more – up to a maximum of $650.[5]

The bill eliminates this formula and substitutes a formula that ensures that joint filers do not pay more combined tax on their joint return than they would if they filed separate returns. Under the bill, the joint filing credit equals the difference between the spouses' combined liability on their joint return and the total amount of tax that would be due on the couple's separate returns if each spouse claimed all adjustments and

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[3] R.C. 5747.41.

[4] R.C. 5747.02. Income from doing business is taxed at a rate of 3% so long as it is not more than $250,000 (or $125,000 per spouse if spouses file separately); business income in excess of those thresholds is taxed at the graduated rates.

[5] R.C. 5747.05(G).

credits allowed on those separate returns in a manner that would result in the least combined amount of tax due.

Tax filing status

The bill authorizes a married couple to elect to file either separate state income tax returns or a joint state income tax return regardless of their federal filing status. Under current law, married couples are required to maintain the same filing status for their Ohio income tax return as they elected for their federal income tax return. The bill preserves the current option allowing couples to elect either separate or joint filing status if one or both spouses is not required to file a federal income tax return but is required to file an Ohio income tax return.[6]

Sales and use tax exemption for core charges

The bill excludes the portion of the price of an item that represents a "core" charge from the sales and use tax. A core charge is a charge included in the price of an item purchased to replace a used or broken item that is returned to the seller for the purpose of recycling or remanufacturing the item.

The most common example of the use of core charges is in the after-market auto parts industry. A customer may purchase a part, such as a brake caliper, to replace a worn or damaged caliper. The customer pays cash for the caliper, and a component of that price is a core charge. The core charge is returned to the customer only if and when the customer returns the worn or damaged caliper (the "core"). This practice encourages recycling of used items that can be rebuilt and reused.

Under current law, sales and use tax applies to the entire consideration paid for an item regardless of whether the payment is by cash, credit, property, or services. Accordingly, a core charge is included in the taxable "price" of the purchased item, because it represents the part of the purchase price to be paid in the form of property if the core is exchanged. The bill instead provides that, when a vendor accepts a core as part of the purchase price of an item, the taxable price of the item must be reduced by the value of the core offered in exchange for the new item. When the core is exchanged at the time of the purchase, the taxable price of the new item must be reduced at the time of sale. If the core is not exchanged at the time of purchase, the taxable price of the new item is not reduced, but the consumer may receive a refund of the sales tax paid with respect to the core when the core is received later.[7]

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[6] R.C. 5747.08.

[7] R.C. 5739.01(H)(5).

Hydrocarbon severance taxes

Current law levies a tax on any person that severs either of two hydrocarbons – oil or natural gas – from the ground or water in Ohio. The tax equals 10¢ per barrel of oil and 2½¢ per Mcf (1,000 cubic feet) of natural gas and is generally quarterly. A separate "cost recovery assessment" is levied in the additional amount of 10¢ per barrel of oil and ½¢ per Mcf of natural gas for all oil and gas wells, except very low volume wells.

Effective July 1, 2015, the bill repeals the cost recovery assessment, distinguishes between horizontal and nonhorizontal wells for the purposes of imposing different tax rates, bases, and exemptions for oil and gas produced from each type of well, distinguishes for tax purposes additional types of hydrocarbons, and earmarks the revenue from hydrocarbons produced from each type of well for different purposes. Because of an engrossing error, provisions limiting the horizontal well severance tax to resources severed only from wells located on state owned land were unintentionally omitted from the introduced bill.

Horizontal versus nonhorizontal wells

The bill distinguishes between "horizontal" wells and "nonhorizontal" wells for severance tax purposes. Horizontal wells are wells drilled to produce oil or gas with a wellbore that reaches a horizontal or near horizontal position in the Point Pleasant, Utica, or Marcellus formation and that is stimulated to produce. (Stimulation is defined as a "process of enhancing well productivity, including hydraulic fracturing operations.")[8]

Taxable resources

The bill defines "oil" and "gas" for the purposes of the severance tax. "Gas" (as compared to the current "natural gas"), is defined as hydrocarbons in a gaseous phase at standard temperature and pressure. "Oil" is defined as hydrocarbons produced in liquid form by ordinary production methods.

The bill also distinguishes two other types of hydrocarbons for purposes of the horizontal well severance tax: condensate – liquid hydrocarbons separated at or near the well pad or along the gas production or gathering system or by gas processing – and natural gas liquids (NGLs) – hydrocarbons separated from severed gas, such as propane and ethane.[9]

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[8] R.C. 5749.01.

[9] R.C. 1509.01 and 5749.01.

Nonhorizontal well tax rates; cost recovery assessment

The bill increases the tax rate on the severance of oil from nonhorizontal wells from 10¢ per barrel to 20¢ per barrel. The bill also increases the tax on gas extracted from nonhorizontal wells from the current 2½¢ per Mcf rate to 3¢ per Mcf. Despite this increase, however, the total rate of excise on oil and gas remains the same because the bill repeals the cost recovery assessment. As under current law, the bill dedicates 90% of the revenue from the nonhorizontal well severance taxes to the Oil and Gas Well Fund to fund the oil and gas regulatory activities of the Department of Natural Resources (DNR) and 10% to the Geological Mapping Fund to fund the activities of DNR's Division of Geological Survey.[10]

Exemption and fee for gas severed from certain wells

The bill exempts from severance tax gas severed from a non-horizontal well if the total volume of gas produced by that well does not exceed certain thresholds. For a severer filing quarterly returns, the gas is exempt if the well produces an average quarterly gas volume of 910 Mcf or less as measured over the preceding year.

The bill also exempts from the severance tax gas severed from all exempt domestic wells – generally wells owned by a landowner for the purpose of providing gas for the owner's domestic use. Under continuing law, only wells designated as exempt domestic wells on or after June 30, 2010, are exempt from severance tax on the basis of the exempt status.[11] In lieu of paying a severance tax, the bill requires the owners of such wells, except for an exempt domestic well designated before June 30, 2010, to pay an annual $60 fee to DNR by March 31 of each year. Collected fees are credited to the Oil and Gas Well Fund. Under current law, exempt domestic wells designated on or after June 30, 2010, are subject to an annual cost recovery assessment of $60, payable by July 1. As discussed above, the bill repeals this assessment.[12]

Horizontal well severance tax

Beginning July 1, 2015, the bill levies a new value-based severance tax on oil and gas severed from a horizontal well, and condensate and NGL byproducts thereof, and exempts that oil and gas from continuing law's volume-based tax. The new tax, similar to continuing law's severance tax, is imposed on the person that severs the oil or gas. The table below summarizes the base and rates of the new tax, categorized according to

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[10] R.C. 1509.02, 1509.34, 1509.50, 5703.052, 5749.02, 5749.03, 5749.06, 5749.07, 5749.08, 5749.09, 5749.10, 5749.12 to 5749.15, and 5749.17.

[11] R.C. 1509.31(B).

[12] R.C. 1509.11 and 5749.03.

each resource. Gas is taxed at one of two rates depending on whether the gas is placed directly into the natural gas distribution system or processed first to extract condensate or NGLs.

	Tax base (Quarterly)	Tax rate
Oil	Barrels severed × average oil spot price	6½%
Unprocessed Gas	Mcf severed × average gas spot price	6½%
Processed Gas	Mcf collected after processing × average gas spot price	4½%
Condensate	Barrels separated and collected × average condensate spot price	6½%
NGLs	BTUs separated and collected × average NGL spot price	4½%

As the table indicates, the new tax is based on the product of two variables – the "spot price" of severed gas, oil, condensate, or NGL multiplied by the quantity of each resource severed from, or separated from oil or gas severed from, a horizontal well. The Tax Commissioner calculates the quarterly spot price for a unit of each hydrocarbon by averaging each day's closing spot price reported for that hydrocarbon during the quarter beginning six months before the current quarter, as reported by a publicly available source determined by the Commissioner. The spot price for condensate is based on the price of Marcellus-Utica condensate, and the spot price for NGLs is based on the price of natural gas plant liquids composite.

The bill requires the Commissioner to post average quarterly spot prices for oil, gas, condensate, and NGLs applicable to each quarter on the Department of Taxation's website by the last day of the first month of the quarter for which the tax is due. Thus, the average quarterly spot price applicable for a particular quarter is made available to taxpayers several months before the due date of the severance tax return (see "**Return due dates**," below).[13]

Horizontal well revenue distribution

All revenue collected from the new horizontal well severance tax is first credited monthly to the Oil and Gas Well Fund and the Geological Mapping Fund according to a deposit schedule prescribed by the Director of OBM on or after July 1 of each year. In creating the deposit schedule, the bill requires the Director to consider amounts currently appropriated from those funds compared to the funds' current balance and

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[13] R.C. 5749.01 and 5749.02.

anticipated revenue to those funds from other sources. The first required transfer, for November 2015, must occur by December 15, 2015.

After crediting revenue to DNR, the Director quarterly credits remaining horizontal well severance tax revenue as follows:

- 80% to the General Revenue Fund;
- 10% to the County Severance Tax Fund (see "**Revenue to counties**," below);
- 5% to a custodial fund called the Severance Tax Infrastructure Fund (see "**Ohio Shale Products Regional Commission**," below);
- 5% to a custodial fund called the Severance Tax Endowment Fund (see "**Ohio Shale Products Regional Commission**," below).

Interest earnings on money in the latter three funds is credited to the respective fund.[14]

Enforcement of horizontal well severance tax

For purposes of enforcing the new severance tax, the bill authorizes the Tax Commissioner to inspect the books and records of any person involved in the sale or transfer of oil, gas, condensate, or NGLs.[15]

Revenue to counties

Under the bill, all horizontal well severance tax revenue credited to the County Severance Tax Fund must be distributed quarterly to each county treasury. The amount each county receives is proportionate to the number of horizontal wells located in the county on the last day of the preceding year that had been drilled or for which drilling had been initiated pursuant to a DNR permit, compared to such wells located in the entire state on that day. The proportion is calculated for each year by the Chief of DNR's Division of Oil and Gas Resources Management and certified to the Director of OBM and the Tax Commissioner.

Once received by the county treasury, the money is to be credited to a special county fund called the "Severance Tax Fund." Money in each county's Severance Tax Fund is distributed to local governments in the county according to an order issued by

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[14] R.C. 5749.02(B)(7).

[15] R.C. 5703.19.

the county's budget commission, which, under continuing law, is a commission consisting of the county auditor, prosecutor, treasurer, and, in some counties, two additional elected members. The primary functions of the budget commission under continuing law include auditing annual tax budgets of taxing authorities in the county, determining annual property tax rates for each taxing authority, and distributing property tax revenue to each taxing authority. The bill requires the budget commission to establish procedures and standards for distributing the money, but the bill does not require the commission to adopt any particular procedure or standard.[16]

Ohio Shale Products Regional Commission

The bill requires horizontal well severance tax revenue credited to the Severance Tax Infrastructure Fund and Severance Tax Endowment Fund to be awarded as grants to local governments in counties with active oil and gas development in the shale formations (defined as "eligible subdivisions" and "eligible counties"). The bill requires the Chief of DNR's Division of Oil and Gas Resources Management to annually update the list of eligible counties. Both funds, which are custodial and not in the state treasury, are administered by a new commission created by the bill called the Ohio Shale Products Regional Commission.

Members and administration

The Ohio Shale Products Regional Commission be responsible for all of the following:

(1) Awarding grants to eligible subdivisions from the Severance Tax Infrastructure Fund and Severance Tax Endowment Fund;

(2) Identifying "local match programs" for investments in eligible subdivisions;

(3) Assisting the short-term and long-term needs of eligible subdivisions;

(4) Overseeing the long-term success of eligible subdivisions.

The Commission is a 13-member body with nine members appointed by the Governor and four ex officio members. The nine appointed members include the following:

(1) A county or civil engineer;

(2) A person experienced in local economic development;

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[16] R.C. 190.03, 190.04, 321.50, 1509.11, and 5749.02.

(3) A representative of the active oil and gas production region overlaying Ohio's shale formations;

(4) A representative of eligible counties;

(5) A representative of municipal corporations that are eligible subdivisions;

(6) A representative of townships that are eligible subdivisions;

(7) A person recommended for appointment by the Speaker of the House;

(8) A person recommended for appointment by the President of the Senate;

(9) The president of the nonprofit corporation, The Foundation for Appalachian Ohio, or the president's designee.

Appointed members serve four-year, staggered terms except for the representative of the Foundation for Appalachian Ohio, who is a permanent member of the Commission. The bill requires the Governor to appoint members by October 1, 2015, and authorizes the Governor to remove any appointed member for any of several specified reasons (for example, if the member is inefficient or derelict in the discharge of the member's duties or if the member is found by the Ohio Ethics Commission to have violated Ohio ethics law). An appointed member is deemed to automatically resign from the Commission if the member misses 60% or more of Commission meetings over a two-year period. Additionally, the Governor may not appoint someone to the committee who has been convicted of or pled guilty or no contest to a felony offense. Any member, including an ex officio member, serving on the Commission is deemed to resign automatically upon the member's indictment for a felony offense.

In addition to the nine appointed members, the Commission has the following four ex officio members:

(1) The Director of DNR;

(2) The Chief Investment Officer of JobsOhio;

(3) The Director of Transportation;

(4) The Director of the Governor's Office of Appalachian Ohio.

Any member except for the representative of The Foundation for Appalachian Ohio may be elected chairperson or vice-chairperson of the Commission by the Commission's members. Meetings of the Commission are subject to the requirements of

Ohio's Open Meetings Law (R.C. 121.22), and documents of the Commission are public records.

Members of the Commission may be reimbursed for their official travel expenses. The Commission may incur expenses to help the Commission in the performance of its duties. The bill requires the Governor's Office of Appalachian Ohio to provide staff and administrative assistance to the Commission upon request. Any such expenses of the Commission or the Governor's Office of Appalachian Ohio are paid from the Severance Tax Infrastructure Fund and, beginning on or after July 1, 2025, from the Severance Tax Endowment Fund, up to a certain amount.

The Ohio Shale Products Regional Commission is the trustee of the money in the Severance Tax Infrastructure Fund and Severance Tax Endowment Fund and is the only body able to withdraw money from those funds. Upon the request of the Commission, the bill requires the Treasurer of State to select one or more investment managers to invest the money in those funds. Any selected investment manager is subject to the investment limitations imposed on the Ohio Public Employees Retirement System and is bound by interested party and conflict of interest restrictions similar to those applicable to the System.

On or before November 1 of each year, the bill requires the Commission to submit a report to the Governor that includes the financial statements for the Severance Tax Infrastructure Fund and Severance Tax Endowment Fund and persons requesting or receiving money from those funds and for what purpose. The report may be audited by the Auditor of State.

Grants to eligible subdivisions

In addition to funding the administrative expenses of the Commission and the expenses of the Governor's Office of Appalachian Ohio for assisting the Commission, money in the Severance Tax Infrastructure Fund and Severance Tax Endowment Fund must be used by the Commission to award grants to eligible subdivisions. The Commission may award grants from the Severance Tax Infrastructure Fund to "support and supplement investments" in eligible subdivisions.

In contrast, the Commission may not award grants or withdraw money from the Severance Tax Endowment Fund until July 1, 2025. However, on or after that date, the Commission may award grants from that fund to any subdivision that is or has been an eligible subdivision for projects that "target long-term growth and continued prosperity" in those subdivisions.[17]

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[17] R.C. 190.01 to 190.04.

Severance tax homestead use exemption

Beginning July 1, 2015, the bill eliminates an exemption from the severance tax for resources with an annual value of not more than $1,000 that are severed from land owned by a severer and used in or used to improve the severer's homestead.[18]

Severance tax administration

Beginning July 1, 2015, the bill makes several administrative changes applicable to all severance taxes.

Severance tax permits

Current law requires a severer to obtain a license from the Tax Commissioner, or, if required to do so under another provision of law, a permit from DNR before severing natural resources from Ohio's soil or water. Under the bill, the Commissioner would no longer issue severance licenses. Instead, severers would have to obtain a permit from or register with DNR. However, before severing natural resources, severers must apply to the Commissioner to open a severance tax account.[19]

Return due dates

Under continuing law, severers are generally required to file returns for natural resources severed in each calendar quarter unless the Tax Commissioner prescribes a different reporting period. Current law requires severers to file returns 45 days after the end of a calendar quarter or other prescribed reporting period. The bill adjusts the return due dates by requiring returns to be filed no later than the 15th day of the second month following the end of each quarter or other reporting period.[20]

Revenue transfers

The bill provides for monthly distribution of severance tax revenues instead of the current quarterly distribution schedule. Current law requires the Tax Commissioner, by the 15th day of the month following the end of each calendar quarter (i.e., January 15, April 15, July 15, and October 15) to certify to the Director of OBM the total amount in the fund that holds all severance tax revenue – the Severance Tax Receipts Fund – after accounting for amounts set aside for severance tax refunds. The certification must include the proportion of such revenue attributed to the tax on each type of natural resource.

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[18] R.C. 5749.03.

[19] R.C. 5749.04.

[20] R.C. 5749.06.

The bill instead requires the Tax Commissioner to make this certification by the 15th day of each month. Additionally, after making this certification, the bill requires the Tax Commissioner to provide for payment of severance tax revenue from the Severance Tax Receipts Fund to the funds to which each severance tax is required to be credited.[21]

Disclosure of severance tax information

Current law appears to authorize DNR to publicly disclose severance tax information given to it by the Tax Commissioner for the purpose of enforcing oil and gas regulatory laws. The bill explicitly limits the ability of DNR to disclose severance tax information by allowing disclosure only to the Attorney General for purposes of enforcing those laws.[22]

Effective date

The bill's severance tax provisions take effect July 1, 2015.[23]

Public employee retirement and re-employment

New re-employment penalty

The bill creates a new re-employment penalty for public employees who retire (a retirant) under a state retirement system and are subsequently employed by a public employer on or after the bill's effective date. Under the bill, during re-employment both of the following apply:

(1) The retirant forfeits the pension portion of the retirement allowance (the pension portion is funded by employer contributions and earnings from the retirement system's investment of employee and employer contributions);

(2) The annuity portion is suspended (the annuity is funded by the retirant's contributions while a public employee).

The penalty applies as long as re-employment continues.[24]

Current law permits a public retirement system member to retire and subsequently be employed in a position covered by one of four of the state's public

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[21] R.C. 5749.06.

[22] R.C. 5749.17.

[23] Section 3.

[24] R.C. 145.38(D), 742.26(D), 3307.35(C), and 3309.341(C).

retirement systems: the Public Employees Retirement System (PERS), Ohio Police and Fire Pension Fund (OP&F), State Teachers Retirement System (STRS), or School Employees Retirement System (SERS). (The fifth system, the State Highway Patrol Retirement System, does not allow employment of retired public employees in positions subject to that system.) Currently, re-employment penalties apply when one of the following occurs: (1) a retirant who has received a retirement allowance for less than two months starts employment with a public employer, (2) unless certain conditions are met, a PERS retirant who retired from elective office is elected or appointed to the same office for the remainder of the existing term of office or the next term, or (3) a PERS retirant is employed as an independent contractor with a public employer.[25]

The new penalty applies to elected officials, as well as to appointed officials currently exempt (state department and division heads, the clerks of the House of Representatives and Senate, and certain Governor appointees) and other retirement system members. For all members retiring on or after the bill's effective date, forfeiture and suspension begin on the first day of the month following the month employment starts and ends on the first day of the month following the month in which employment ends. The annuity portion is used to recalculate the retirement allowance after the employment ends.[26]

The bill provides that neither a retirant subject to the new penalty nor the retirant's employer is to contribute to the retirement system on the retirant's behalf. In contrast, current law requires a retirant and the retirant's employer to contribute to the retirement system for the period of re-employment. The retirant later receives a separate annuity or a lump sum payment based on those contributions.[27]

The bill specifies that for purposes of the re-employment provisions (new and existing), "employ" and "employment" include providing personal services pursuant to a contract or as a consultant, as well as direct employment.[28]

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[25] R.C. 145.38(B) and (C), 742.26(D), 3307.35(F), and 3309.341(C).

[26] R.C. 145.38(D), 145.381(repealed), 145.382 (repealed), 742.26(D), 3307.35(C), 3307.353 (repealed), 3309.341(C) and 3307.345 (repealed).

[27] R.C. 145.38(B), 145.384, 742.26(D) and (G), 3307.35(B) and (C), 3307.352, 3309.341(B) and (C), and 3309.344.

[28] R.C. 145.38(A)(3), 742.26(A)(4), 3307.35(A)(2), and 3309.341(A)(3).

Penalty for PERS retirants who hold elective office

The bill eliminates the current penalty that applies to PERS retirants who hold elective office.[29] The result is that for elective officials retiring before the bill's effective date, the current two-month forfeiture applies (see "**Two-month forfeiture**," below). Officials retiring on or after the bill's effective date are subject to the bill's new penalty.

Currently, unless certain conditions are met, a PERS member who retired while holding a state or local elective office and is elected or appointed to the same office for the remainder of the term or the subsequent term is subject to forfeiture of the pension portion of the retirement allowance and suspension of the annuity portion. The suspended annuity accumulates to the member's credit to be paid in a single payment after the re-employment terminates. The full retirement allowance resumes on the first day of the first month following termination of the re-employment.

The penalty does not apply in any of the following circumstances:

(1) The official retires at least 90 days before the election;

(2) The official files with the county board of elections not less than 90 days before the primary election or, if no primary is scheduled, 90 days before the date on which the primary would have been held, a written declaration of intent to retire before the end of the term;

(3) In the case of a person appointed to an elective office, the person notifies the appointing authority that the person is already retired or intends to retire before the end of the term for which the appointment is made.[30]

Other re-employment penalties

The bill applies current law's re-employment penalties for retirants who return to public employment less than two months after retirement and PERS retirants who act as independent contractors for public employers only to members retiring before the bill's effective date. The penalties are explained below.

It also retains in part a provision under which retirants whose employment commenced before the bill's effective date contribute to a retirement system and receive

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[29] R.C. 145.38(C) in current law, with conforming changes in R.C. 145.01 and 3501.13.

[30] R.C. 145.38(C) in current law.

a separate benefit based on those contributions, except that this provision does not apply to PERS retirants employed as independent contractors with public employers.[31]

Two-month forfeiture

Under current law a retirant who has received a retirement allowance for less than two months when public employment begins forfeits the retirement allowance for any month of employment during the two-month period. On termination of the employment or on the retirant's death, the contributions during that period are refunded. The retirant's service and contributions during the two-month period cannot be used in calculating a benefit for employment with that employer.[32]

PERS retirants employed as independent contractors

A PERS retirant who enters into a contract as an independent contractor with a public employer covered by PERS is subject to a penalty under current law if one of the following applies:

(1) At the time of retirement, the retirant was employed by the contracting public employer;

(2) Less than two months after retirement, the retirant enters into a contract with a public employer other than the retirant's employer at the time of retirement.

If either of the above applies, the retirant is subject to a penalty during the entire period of service under the contract. For the period beginning on the first day of the month following the month in which services under the contract begin until the first day of the month following the month in which the services end, the retirant forfeits the pension portion of the retirement allowance and payment of the annuity portion of the allowance is suspended. The suspended annuity payments accumulate to the retirant's credit and are paid in a single payment after service under the contract terminates.

A retirant subject to this penalty is ineligible to contribute to PERS and is therefore ineligible to receive a benefit for the period of employment under the contract.[33]

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[31] R.C. 145.38(B), 742.26(C), 3307.35(B), and 3309.341(B).

[32] R.C. 145.38(B)(2), 742.26(C)(2), 3307.35(B)(2), and 3309.341(B)(2).

[33] R.C. 145.38(C).

Civil immunity for volunteer health care workers and facilities

Continuing law provides immunity from liability for harm that allegedly arises from an action or omission of certain health care volunteers and facilities in the provision to an indigent and uninsured person of medical, dental, or other health-related diagnosis, care, or treatment, if certain criteria apply. These immunities are qualified – they are subject to certain exceptions.[34]

An "indigent and uninsured person" is a person who meets all of the following requirements:

- The person's income is not greater than 200% of the federal poverty line.
- Until June 30, 2019, the person is eligible for Medicaid or is a Medicaid recipient.
- The person is not eligible for or a recipient, enrollee, or beneficiary of any other governmental health care program.
- Either (1) the person is not a covered individual under a health insurance or health care policy, contract, or plan, or (2) the person is such a covered individual but the insurer, policy, contract, or plan denies coverage or is the subject of insolvency or bankruptcy proceedings.[35]

The bill expands the qualified immunity described above by eliminating the following exceptions to the immunity that are triggered when the health care professionals or health care workers involved are providing one of the following:

- Any medical, dental, or other health-related diagnosis, care, or treatment pursuant to a community service work order or a community control sanction imposed by a court as a result of the health care professional or health care worker having been convicted of a criminal offense;
- Performance of an operation to which any one of the following applies:
    - The operation requires the administration of deep sedation or general anesthesia.
    - The operation is a procedure that is not typically performed in an office.

[34] R.C. 2305.234(B), (C), (D), and (E).

[35] R.C. 2305.234(A)(7).

- The individual involved is a health care professional, and the operation is beyond the scope of practice or the education, training, and competence, as applicable, of the health care professional.

- Delivery of a baby.

The bill also eliminates a provision that retains the immunity, despite an exception applying, when the health care professional or health care worker provides medical, dental, or other health-related diagnosis, care, or treatment that is necessary to preserve the life of a person in a medical emergency.

The bill also eliminates a provision specifying that the qualified immunity does not grant immunity from civil liability to a health care professional, health care worker, nonprofit health care referral organization, or health care facility or location for actions that are outside the scope of authority of health care professionals or health care workers. Similarly, the bill eliminates a provision that limits the immunity for diagnosis, care, or treatment of an indigent and uninsured person who is a Medicaid recipient or is Medicaid eligible to diagnosis, care, or treatment that is provided in a free clinic.

Under continuing law, these immunities remain unavailable to a health care professional, health care worker, nonprofit health care referral organization, or health care facility or location if, at the time of an alleged harm, the health care professionals or health care workers involved are purposefully terminating a human pregnancy.[36]

Medicaid coverage of expansion group

The bill prohibits the Medicaid program from covering the optional eligibility group consisting of individuals who (1) are under age 65, (2) not pregnant, (3) not entitled to (or enrolled for) benefits under Medicare Part A, (4) not enrolled for benefits under Medicare Part B, (5) not otherwise eligible for Medicaid, and (6) have incomes not exceeding 133% of the federal poverty line (138% after using individuals' modified adjusted gross incomes).[37] This group is often called the expansion group or Group VIII. The bill reduces certain Medicaid appropriation items to eliminate funding for the group.[38]

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[36] R.C. 2305.234(F) and (G)(3), with conforming changes in R.C. 2305.234 and 2305.2341.

[37] R.C. 5163.04.

[38] Section 6(C).

Federal health care reform legislation enacted in 2010, the Patient Protection and Affordable Care Act and the Health Care and Education Reconciliation Act of 2010, authorizes states' Medicaid programs to cover this group.[39] As enacted, the law required state Medicaid programs to cover the expansion group, but the U.S. Supreme Court, in a 2012 case, effectively made the expansion an optional eligibility group by prohibiting the U.S. Secretary of Health and Human Services from withholding all or part of a state's other federal Medicaid funds for failure to implement the expansion.[40] Expanded coverage has been available in Ohio since January 1, 2014.

Abortion limitations

The bill requires the Ohio Department of Health to ensure that state funds and specific federal funds that are received or used in certain programs or initiatives are not used to perform or promote elective abortions, or to contract or affiliate with any entity that performs or promotes such abortions.[41] Sub. H.B. 294 of the 131st General Assembly enacted into law provisions nearly identical to the bill's provisions (see pages 2-4 of the Final Analysis for that Act under the headings "Abortion limitations" and "Application of abortion limitations").[42]

Appropriation reductions

The bill reduces aggregate General Revenue Fund appropriations by specified amounts for fiscal years 2016 and 2017 for certain agencies. The bill also requires the Director of Budget and Management to annually determine the amount of reductions to individual appropriation items in a manner that preserves critical state services. The bill requires the Director to make the reductions by July 15 of each fiscal year. In each annual determination, the aggregate amount of reductions for each agency must equal the reduction required in the current fiscal biennium. Since fiscal year 2016 is over and July 15 of fiscal year 2017 has already passed, it is unclear what effect, if any, the bill would have on agency appropriations for the current biennium.

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[39] 42 U.S.C. 1396a(a)(10)(A)(i)(VIII) and (e)(14).

[40] *National Federation of Independent Business v. Sebelius* (2012), 132 S. Ct. 2566.

[41] R.C. 3701.034.

[42] Sub. H.B. 294, Ohio Legislature, https://www.legislature.ohio.gov/legislation/legislation-documents?id=GA131-HB-294 (last visited Nov. 14, 2016). H.B. 294's provisions address nontherapeutic abortions (instead of elective abortions as described in H.B. 257) and extend to the use of federal funds for the Personal Responsibility Education Program (adolescent abstinence and contraception).

The bill exempts certain items used for debt service, property tax reimbursement, and Medicaid payments from the required reductions.[43]

HISTORY

ACTION	DATE
Introduced	06-10-15

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[43] Section 6(A) and (B).