Ohio Legislative Service Commission

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Fiscal Note & Local Impact Statement

Bill: S.B. 177 of the 128th G.A.

Date: November 5, 2009

Status: As Introduced

Sponsor: Sens. Seitz and Cates

Local Impact Statement Procedure Required: Yes — Corrected after initial review

Contents: To decouple Ohio law from recent federal income tax changes, to transfer cash balances in the OMVI Enforcement Education Fund, the Elementary School Seat Belt Program Fund, and the Seat Belt Education Program, and to make appropriations

State Fiscal Highlights

STATE FUND	FY 2010	FY 2011	FUTURE YEARS
General Revenue Fund			
Revenues	Gain of between $1.63 million and $1.79 million from cash balance transfers plus gain of approximately $1.3 million in redirected fines; Potential gain of $56.5 million from the decoupling from federal income tax law	Gain of approximately $2.6 million in redirected fines; Potential gain of $9.8 million from the decoupling from federal income tax law	Potential loss of $44.7 million from the decoupling from federal income tax law
Expenditures	Increase of $34.4 million	Increase of $34.4 million	- 0 -
OMVI Enforcement/Education Fund (Fund 83G0)			
Revenues	Loss of approximately $330,000-$480,000 from cash balance transfer plus loss of approximately $213,000 in redirected fines	Loss of approximately $426,000 in redirected fines	- 0 -
Expenditures	Decrease, commensurate with revenue loss	Decrease, commensurate with revenue loss	- 0 -
Elementary School Seat Belt Program Fund (Fund 83N0)			
Revenues	Loss of approximately $1.15 million from cash balance transfer plus loss of approximately $195,000 in redirected fines	Loss of approximately $390,000 in redirected fines	- 0 -
Expenditures	Decrease, commensurate with revenue loss	Decrease, commensurate with revenue loss	- 0 -
Seat Belt Education Program Fund (Fund 8440)			
Revenues	Loss of approximately $150,000-$165,000 from cash balance transfer plus loss of approximately $192,000 in redirected fines	Loss of approximately $384,000 in redirected fines	- 0 -
Expenditures	Decrease, commensurate with revenue loss	Decrease, commensurate with revenue loss	- 0 -

Note: The state fiscal year is July 1 through June 30. For example, FY 2010 is July 1, 2009 – June 30, 2010.

- The bill increases existing GRF appropriations in the Department of Education budget by $34.4 million each year of the biennium.
- State income tax revenue is distributed primarily to the GRF (94.1%). The decoupling of Ohio income tax law from federal income tax law is estimated to yield GRF receipts of $56.5 million in FY 2010 and $9.8 million in FY 2011. A portion of those gains will be reversed in future years.
- As a result of the bill's operating a vehicle while under the influence (OVI) and seat belt provisions, the GRF will gain additional revenues as follows: one-time cash balance transfers totaling between $1.63 million and $1.79 million, and redirected state and local fine moneys totaling approximately $1.3 million in FY 2010 and $2.6 million in FY 2011.
- Assuming that future OVI convictions and related fine collections mirror calendar year (CY) 2006, then, as a result of the bill, over the course of FYs 2010 and 2011, the state's Fund 83G0 will lose up to $639,000 or more. In addition, the amount of the cash balance in Fund 83G0 at the time of enactment that would be transferred to the GRF is estimated at between $330,000 and $480,000.
- Assuming that future seat belt violations mirror history, then, as a result of the bill, over the course of FYs 2010 and 2011, the state's Fund 83N0 will lose up to $585,000 or more. In addition, the amount of the cash balance in Fund 83N0 at the time of enactment that would be transferred to the GRF is estimated at $1.15 million.
- Assuming that future seat belt violations mirror history, then, as a result of the bill, over the course of FYs 2010 and 2011, the state's Fund 8440 will lose up to $576,000 or more. In addition, the amount of the cash balance in Fund 8440 at the time of enactment that would be transferred to the GRF is estimated at between $150,000 and $165,000.

Local Fiscal Highlights

LOCAL GOVERNMENT	FY 2010	FY 2011	FUTURE YEARS
Local Enforcement and Enforcement Funds			
Revenues	Loss of approximately $1.4 million statewide	Loss of approximately $0.7 million statewide	- 0 -
Expenditures	Likely decrease, commensurate with revenue loss	Likely decrease, commensurate with revenue loss	- 0 -
Counties, municipalities, townships, and public libraries			
Revenues	Potential gain of $3.4 million from the decoupling from federal income tax law	Potential gain of $0.6 million from the decoupling from federal income tax law	Potential loss of $2.7 million from the decoupling from federal income tax law
Expenditures	- 0 -	- 0 -	- 0 -

Note: For most local governments, the fiscal year is the calendar year. The school district fiscal year is July 1 through June 30.

- State income tax revenue is distributed to the Local Government Fund (LGF, 3.68%) and the Public Library Fund (PLF, 2.22%). The decoupling of Ohio income tax law from federal income tax law potentially increases state income tax revenues during the biennium, thus increasing distributions to the two local government funds. A partial reversal of state income tax gains in future years will also decrease receipts from the tax to the two local government funds.
- Assuming that future OVI convictions and related fine collections mirror CY 2006, then, as a result of the bill, over the course of FYs 2010 and 2011, local enforcement and education funds statewide will lose a total of approximately $2.1 million.

Detailed Fiscal Analysis

Income tax

Am. Sub. H.B. 1 (the operating budget act) expressly incorporated into Ohio's personal income tax law changes made to federal income tax law since December 30, 2008, and allowed a taxpayer whose taxable year ended after that date but before the effective date of the incorporated changes, to elect to apply federal law as it existed before that date. The American Recovery and Reinvestment Act of 2009 (ARRA) – the federal "stimulus" bill – was the principal federal act whose tax law changes were incorporated. The calculation of Ohio personal income tax begins with federal adjusted gross income (FAGI); thus, federal tax changes that modify gross income also have the potential to change Ohio income tax when Ohio law conforms to the federal tax changes. From the various provisions in ARRA, three had the potential to materially reduce Ohio income tax revenues: (1) the exclusion of up to $2,400 of unemployment insurance benefits from gross income for taxable year 2009, (2) the deferral of income from discharge of certain indebtedness, and (3) the extension of the carryback period from three to five years for taxpayers with 2008 gross receipts of $15 million or less. The bill reverses all three provisions of H.B. 1 and restores income deferred in federal income to Ohio adjusted gross income.

Unemployment income

ARRA excluded up to $2,400 of an individual's unemployment compensation from federal gross income for taxable year 2009. The bill requires the taxpayer to add to Ohio adjusted gross income amounts excluded in the federal tax return. This would increase revenue from the individual income tax.

Deferral of income from discharge of certain indebtedness

ARRA allowed a business to defer income if it reacquires its own debt at a discount in 2009 and 2010. Such income was to be recognized (included in income) in five successive taxable years beginning in 2015. This provision was expected to benefit a number of firms whose debt obligations degraded during the downturn in credit and real estate markets.[1] Because Ohio's corporate income tax has been eliminated, except for financial corporations, this provision would affect only those taxpayers that are pass-through entities, such as S-corporations, limited liability corporations, and partnerships. The bill requires such pass-through entities to recognize the income from discharge of debt for Ohio income tax purposes, instead of deferring that income as proposed in the federal income tax. Therefore, the bill accelerates the timing of future

[1] Under existing federal law, if a business that has borrowed funds (issued debt) takes steps to buy back such debt at less than the issue price, the difference between the original price and the debt's current value becomes taxable income, and it is taxed during the year in which such reacquisition occurs. Under certain circumstances, such as bankruptcy, income from discharged debt is not taxable.

tax payments into the current biennium and the owners of the pass-through entities will forgo tax gains on their Ohio income tax in FYs 2010-2011 (if they choose to defer recognition of income in their federal income tax returns). The bill also specifies that, in future years, when the pass-through entities recognize the deferred income for federal tax purposes, they must subtract that income when determining Ohio adjusted gross income, which creates a corresponding revenue loss in future years.

Extended carryback of 2008 net operating losses

Under current federal law, when most income taxpayers realize a net operating loss (NOL) during a given year, the loss may generally be deducted against positive income achieved during the two most recent prior taxable years, by filing amended returns for those years. This is described as an NOL "carryback." If a carryback does not eliminate the entire NOL, then the loss may be carried forward to be deducted in a future taxable year (not to exceed 20 years). Compared to an NOL carryforward, the NOL carryback deduction provides more immediate benefits to taxpayers and produces a tax refund (unless there are outstanding tax liabilities still owed on that year). ARRA extended the carryback period to five years for taxpayers with 2008 gross receipts of $15 million or less. Only those losses realized for the taxable year beginning or ending in 2008 were eligible for this extended carryback treatment. S.B. 177 requires taxpayers claiming the extended carryback in their federal tax returns to add back that income in their Ohio income tax returns. Thus, the bill increases income tax revenue in the current biennium. This fiscal note assumes taxpayers would be allowed subsequent deductions of the income added back to future tax returns, which would reduce revenue in future years.

State income tax revenue is distributed to the General Revenue Fund (GRF, at 94.1%), the Local Government Fund (LGF, 3.68%), and the Public Library Fund (PLF, 2.22%). For FYs 2010-2011, distributions of tax revenues to the GRF are increased to 94.35% and those to the PLF are reduced to 1.97%. Table 1 provides estimated revenue gains from S.B. 177 to the GRF, the LGF, and the PLF in FYs 2010-2011. Note that the gains from the second and third tax changes listed will be reversed in future years. Revenue losses from the exclusion in Ohio tax returns of income included in federal income tax (from the deferral of certain indebtedness) are to start in FY 2015. Estimates are from the Department of Taxation.

Table 1: Estimated Income Tax Revenue Gain from S.B. 177 (in millions)

	FY 2010			FY 2011		
Item	**GRF**	**LGF**	**PLF**	**GRF**	**LGF**	**PLF**
Unemployment Benefits	$21.6	$0.8	$0.5	$0.0	$0.0	$0.0
Deferral of Income from Discharge of Debt	$20.0	$0.8	$0.4	$12.8	$0.5	$0.3
Extended Carryback of NOL	$14.9	$0.6	$0.3	($3.0)	($0.1)	($0.1)
Total	**$56.5**	**$2.2**	**$1.2**	**$9.8**	**$0.4**	**$0.2**

Cash and fines transferred to the GRF

OVI fines

Under current law, a specified amount of fines imposed for operating a vehicle under the influence must be paid to the enforcement and education fund established by the legislative authority of the law enforcement agency that primarily was responsible for the arrest of the offender. The bill redirects those fine revenues to the GRF for FYs 2010 and 2011, which would create corresponding losses to the state and local law enforcement agencies that would otherwise have used those moneys for enforcement and education efforts with respect to OVI laws.

At the state level, the OVI revenue loss would be experienced by the OMVI Enforcement/Education Fund (Fund 83G0), which contains fine moneys collected from OVI convictions stemming from arrests by the Ohio State Highway Patrol. The bill also transfers the cash balance in Fund 83G0 to the GRF at the time of enactment.

Based on data obtained from the Department of Public Safety, LSC has calculated that, in CY 2006, there were a total of 58,346 individuals convicted of OVI offenses in the state of Ohio. The total amount of fine revenue collected was approximately $1,845,520 for deposit in state and local enforcement and education funds statewide. The state's share of this fine revenue was approximately $449,938. The remainder, $1,395,582, was deposited in local enforcement and education funds statewide.

Assuming that future OVI convictions and related fine collections mirror CY 2006, then, as a result of the bill, over the course of FYs 2010 and 2011, the state's Fund 83G0 will lose up to $639,000 or more, and local enforcement and education funds statewide will lose a total of approximately $2.1 million. In addition, the amount of the cash balance in Fund 83G0 at the time of enactment that would be transferred to the GRF is estimated at between $330,000 and $480,000.

Seat belt fines

The bill: (1) redirects a certain portion of the fines imposed for violations of the Seat Belt Law to the GRF in both FYs 2010 and 2011, and (2) transfers, at the time of enactment, the cash balances in the Elementary School Seat Belt Program Fund (Fund 83N0) and the Seat Belt Education Program Fund (Fund 8440) to the GRF.

Fund 83N0. Assuming that future seat belt violations mirror history, then, as a result of the bill, over the course of FYs 2010 and 2011, the state's Fund 83N0 will lose up to $585,000 or more. In addition, the amount of the cash balance in Fund 83N0 at the time of enactment that would be transferred to the GRF is estimated at $1.15 million.

Fund 8440. Assuming that future seat belt violations mirror history, then, as a result of the bill, over the course of FYs 2010 and 2011, the state's Fund 8440 will lose up to $576,000 or more. In addition, the amount of the cash balance in Fund 8440 at the time of enactment that would be transferred to the GRF is estimated at between $150,000 and $165,000.

GRF

As a result of the bill's OVI and seat belt provisions, the GRF will gain additional revenues as follows:

- One-time cash balance transfers totaling between $1.63 million and $1.79 million.
- Redirected state and local fine moneys totaling approximately $1.3 million in FY 2010 and $2.6 million in FY 2011.

Appropriations

The bill increases GRF appropriations by $34.4 million each in FY 2010 and in FY 2011 in the Department of Education. Appropriation item GRF 200511, Auxiliary Services, is increased by $24.0 million, and appropriation item GRF 200531, Nonpublic Administrative Cost Reimbursement, is raised by $10.4 million in each year of the biennium.

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