Ohio Legislative Service Commission

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Fiscal Note & Local Impact Statement

Bill: Sub. S.B. 181 of the 128th G.A.

Date: June 1, 2010

Status: As Passed by the House

Sponsor: Sen. Stewart

Local Impact Statement Procedure Required: No — No local cost

Contents: Grants certain reclamation activities immunity from liability, authorizes cash transfers for certain Department of Natural Resources and Department of Education functions, makes appropriations for the Clean Ohio Revitalization and Job Ready Sites programs, and makes other changes

State Fiscal Highlights

Department of Natural Resources

- The bill requires the transfer of up to $2.28 million in FY 2011 from the investment earnings of the Coal Workers' Pneumoconiosis Fund used by the Bureau of Workers' Compensation to the Coal Mining Administration and Reclamation Reserve Fund (Fund 5260) used by the Department of Natural Resources to cover shortfalls in cash available for the regulation of coal mining activities.
- Upon the request of the Director of Natural Resources, the bill requires the Director of Budget and Management to transfer up to $1.2 million between July 1, 2010 and January 1, 2012 from the Natural Areas and Preserves Fund (Fund 5220) to the Departmental Projects Fund (Fund 1550) to support payroll for the permanent staff of the Division of Natural Areas and Preserves. This covers these expenses for all of FY 2011 and half of FY 2012.

Department of Development

- The bill appropriates $100 million for the Clean Ohio Revitalization Fund (Fund 7003) for the FY 2011-FY 2012 capital biennium.
- The bill appropriates $30 million for the Job Ready Site Development Fund (Fund 7012) for the FY 2011-FY 2012 capital biennium.

Department of Education

- The bill requires that $35 million in cash be transferred in FY 2010 from the Lottery Profits Education Reserve Fund (Fund 7018) to the Lottery Profits Education Fund (Fund 7017) and increases LPE Fund 7017, appropriation item 200612, Foundation Funding, by the same amount. Item 200612 is used in conjunction with GRF appropriations to make payments to schools under the state school funding formula.

- The bill requires, under certain conditions, that GRF encumbered balances in the Department of Education's budget that would otherwise lapse be transferred to the ARRA Compliance Fund (Fund 5JA0). The bill appropriates $25 million in FY 2010 and FY 2011 to SSR Fund 5JA0 appropriation item 200611, ARRA Compliance, to be used for an additional per pupil subsidy to be paid to school districts, community schools, and STEM schools in FY 2010 and FY 2011.
- The bill requires that $10 million in appropriations be transferred in FY 2010 from GRF appropriation item 200550, Foundation Funding: $7.0 million to GRF appropriation item 200511, Auxiliary Services, and $3.0 million to GRF appropriation item 200532, Nonpublic Administrative Cost Reimbursement. These appropriation items provide state funding for chartered nonpublic schools. The bill repeals sections of Sub. H.B. 318 of the 128th General Assembly that also would have increased this funding for chartered nonpublic schools under certain circumstances.

Tax and debt provisions

- The bill provides a tax exemption for qualifying real and personal property used in constructing a convention center in Cuyahoga County. This may result in reduced sales and use tax revenue to the state. The potential revenue loss may be several millions of dollars, depending on the size of facilities. Under permanent law, 94.1% of the tax revenue is distributed to the GRF; in FY 2011 under temporary law, the GRF share is 94.35%.
- The tax exemption also may result in increased state aid to the school district where the convention center is located. However, state aid to this school district may not increase in FY 2011 if the convention center is in the Cleveland City School District or another district subject to either the cap or on the guarantee.
- The bill allows the board of trustees of a regional water and sewer district to offer a program of deferred compensation which exempts qualified contributions to the program from the state income tax. The exemption is likely to reduce state income tax by a minimal amount.
- The bill expands the Treasurer of State's authority to invest the state interim funds in debt interests issued by any single issuer that is a foreign nation. This provision has no state fiscal effect.

Environmental Protection Agency

- The bill expands the permissible uses of the Clean Water and Drinking Water State Revolving Loan funds to include additional purposes consistent with federal law.

Local Fiscal Highlights

School districts

- The bill requires that, under certain conditions, an additional per pupil subsidy be paid to school districts, community schools, and STEM schools in FY 2010 and FY 2011.
- The bill provides a tax exemption for qualifying real and personal property used in constructing a convention center in Cuyahoga County. This may reduce real property tax revenues to the school district and other units of local government where the convention center is located.
- Loss of real property tax revenue from the tax exemption to a school district may be partly offset by increased state aid, but may not be partly offset in FY 2011 if the convention center is in the Cleveland City School District or another district subject to either the cap or on the guarantee.

Counties, municipalities, and libraries

- State sales tax revenue is distributed to the Local Government Fund (LGF, 3.68%) and the Public Library Fund (PLF, 2.22%). In FY 2011 only, the PLF share is 1.97%. Thus, a reduction in state sales tax revenue, due to the tax exemption for a convention center in Cuyahoga County, would decrease distributions to these two local funds.
- The tax exemption also is likely to reduce sales tax revenue to Cuyahoga County and to the Greater Cleveland Regional Transit Authority.

Enterprise zones

- The bill extends the time during which local governments may enter enterprise zone agreements from October 15, 2010 to October 15, 2011.

Detailed Fiscal Analysis

The bill contains provisions that affect the Department of Natural Resources (DNR), the Department of Development, and the Department of Education, as well as various taxation and debt provisions and several miscellaneous provisions affecting other agencies. The fiscal effects of these provisions are described in further detail below.

Department of Natural Resources

Cash transfer to support coal mine regulation

The bill requires the transfer of up to $2.28 million from the investment earnings of the Coal Workers' Pneumoconiosis Fund used by the Bureau of Workers' Compensation (BWC), also known as the Black Lung Fund, to the Coal Mining Administration and Reclamation Reserve Fund (Fund 5260) used by the Department of Natural Resources. The bill requires the transfer to take place by December 31, 2010. This transferred cash would be used to cover costs that the Division of Mineral Resources Management (DMRM) incurs for administering the Coal Regulatory Program, make up for an anticipated shortfall of approximately $480,000 in federal funding, and offset a reduction in GRF appropriations for DMRM in FY 2011. According to BWC, the Black Lung Fund contained net assets of $191.4 million as of March 31, 2010, with anticipated investment earnings of $10 million in FY 2010.

Cash transfer for Division of Natural Areas and Preserves employee salaries

Under current law, the Natural Areas and Preserves Fund (Fund 5220), which consists primarily of revenues from the donation of personal income tax refunds, or "check-offs," may be used to support the payroll costs of temporary and seasonal employees of the Division of Natural Areas and Preserves (DNAP). However, Fund 5220 may not be used to fund the salaries of permanent, full-time employees. The bill authorizes the transfer of up to $1.2 million from Fund 5220 to the Departmental Projects Fund (Fund 1550) in order to pay the salaries of permanent DNAP employees during FY 2011 and FY 2012. The bill also requires DNR to submit a detailed report of expenditures paid using the transferred funds to the Speaker of the House of Representatives and the President of the Senate. Additionally, the bill specifies that if the 129th General Assembly does not appropriate funds for DNAP in the main operating budget act for FY 2012 and FY 2013, then it is the intent of the 128th General Assembly that a portion of the transferred funds may be used to pay the unemployment compensation costs of former permanent DNAP employees.

Liability immunity for reclamation activities

Under four specific situations, the bill grants eligible landowners and nonprofit organizations that provide access to qualifying abandoned mine lands liability immunity for reclamation activities overseen by DMRM. However, the bill requires a landowner to notify DMRM of known, latent, or dangerous conditions in the work area, and specifies that the immunity does not apply if the landowner fails to meet the notification requirements or otherwise engages in unlawful, negligent, reckless, or other specified activities. As a result of rules promulgated under these provisions, the Division could incur some minimal administrative costs that would be paid from Fund 5260.

Ohio Natural Areas Council

The bill reestablishes the Ohio Natural Areas Council in order to advise DNAP on the administration of nature preserves and the preservation of natural areas. The Council is to consist of at least five members to be appointed by the Director of Natural Resources. The bill prohibits members from receiving compensation or reimbursement for expenses related to their duties.

Department of Development

Clean Ohio Revitalization Fund appropriations

The bill appropriates $100 million for the Clean Ohio Revitalization Fund (Fund 7003) over the FY 2011-FY 2012 capital biennium. This total includes appropriations of $80 million in line item C19500, Clean Ohio Revitalization, and $20 million in line item C19501, Clean Ohio Assistance. These funds are used for clean-up and remediation projects that support redevelopment of brownfield sites.

Job Ready Sites Program appropriations

The bill appropriates $30 million for the Job Ready Site Development Fund (Fund 7012) over the FY 2011-FY 2012 capital biennium. These funds are spent out of line item C19502, Job Ready Sites, and provide grants to support the development or redevelopment of manufacturing facilities, office properties, technical centers, or industrial sites, or for land acquisition for such projects.

Incentives for sporting events

Current law enacted in H.B. 1, the main operating budget act for FY 2010 and FY 2011, creates a financial incentive for local political subdivisions to enter into joinder agreements with site selection organizations to host certain sporting events. The incentive is to be provided through the Department of Development in the form of a payment from the GRF in an amount equal to the estimated incremental increase in state sales tax revenues resulting from the event if such an increase is estimated to be at least $250,000. H.B. 1 capped state incentive payments at $500,000 for a single eligible entity, and caps the total amount that the state may disburse in a single year at

$1 million. Disbursements for these incentives will not begin until July 1, 2011, the beginning of FY 2012.

The bill adds to the list of sporting events for which local governments are eligible to receive the incentive that was created in H.B. 1. Specifically, the bill adds NASCAR races, the Air New Zealand Golden Oldies World Rugby Festival, and boxing competitions including the National Golden Gloves Tournament, the USA Boxing Association National Championships, and the International Boxing Association World Cup or World Championships. The bill does not create any additional costs to the state or local governments by adding these events. The caps on disbursements would remain the same for these events as for other eligible sporting events listed in current law. In addition, as under current law, any payments made to local governments to attract eligible events would not be made before July 1, 2011.

Department of Education

Lottery profits transfer

The bill requires that $35 million in cash be transferred from the Lottery Profits Education Reserve Fund (Fund 7018) to the Lottery Profits Education Fund (Fund 7017) in FY 2010, and increases the appropriation for Fund 7017 appropriation item 200612, Foundation Funding, by the same amount. This appropriation is used in conjunction with GRF appropriation item 200550, Foundation Funding, to make payments to schools under the school funding formula.

ARRA compliance

Ohio receives education funding in FY 2010 and FY 2011 from the federal State Fiscal Stabilization Fund (SFSF), which was established by the American Recovery and Reinvestment Act of 2009 (ARRA). ARRA requires that SFSF education money first be used to bring payments under the state's primary funding formulas for primary and secondary education and for higher education up to the FY 2009 level in FY 2010. If SFSF money remains for FY 2011, ARRA requires it again be used to bring payments under the two formulas to the FY 2009 level in FY 2011. If the SFSF money is not sufficient, however, to bring the payments to the FY 2009 level in FY 2011, then the payments may be reduced from that level, but only if the reductions for both formulas are proportionate to each other.

Ohio's primary funding formula for primary and secondary education depends on a number of variables that are projected at the beginning of the year. It is possible, therefore, that the funding formula for FY 2010 or FY 2011 may result in less funding than required by ARRA. The bill requires that the Superintendent of Public Instruction identify in each fiscal year the amount by which funding is less than required by ARRA and calls this amount the "ARRA compliance difference." The Superintendent must also identify GRF encumbered balances in the Department of Education's budget that are no longer needed equal to the ARRA compliance difference.

The bill requires that the Director of Budget and Management transfer cash equal to the GRF encumbered balances indentified by the Superintendent from the GRF to the ARRA Compliance Fund (Fund 5JA0), which is created by the bill. The transferred cash is to be used for an additional per pupil subsidy to be paid to school districts, community schools, and STEM schools. Under the bill, therefore, the state may pay, and school districts, community schools, and STEM schools may receive, state aid above the level otherwise calculated by the school funding formula. The bill appropriates $25 million to Fund 5JA0 appropriation item 200611, ARRA Compliance, in both FY 2010 and FY 2011.

Chartered nonpublic school funding

The bill requires that $10 million in appropriations be transferred in FY 2010 from GRF appropriation item 200550, Foundation Funding, which is used primarily to make payments to schools under the school funding formula. A total of $7 million is to be transferred to GRF appropriation item 200511, Auxiliary Services, and $3 million to GRF appropriation item 200532, Nonpublic Administrative Cost Reimbursement. These appropriation items provide state funding for chartered nonpublic schools. The bill repeals sections of Sub. H.B. 318 of the 128th General Assembly that also may have increased the funding for chartered nonpublic schools if certain conditions were met.

Report card ratings

The bill revises school district and building report card ratings. Report card ratings do not have a direct fiscal effect on school districts, so the bill's changes will have no direct fiscal effect either. Possible indirect effects of report card ratings may include state sanctions, interventions, and services for districts with low ratings and exemptions from certain state mandates for districts with high ratings. Although the Department of Education will need to change the way it calculates the ratings, this will not result in significant costs.

Tax and debt provisions

Expansion of the Treasurer of State's authority to invest in single-issuer debt

The bill revises the Treasurer of State's investment authority to invest the state interim funds in qualified debt of a single issuer that is a foreign nation diplomatically recognized by the United States government. The bill allows the Treasurer to invest up to 1% of the state's portfolio of the state interim funds in debt issued by a foreign nation. Currently, the Treasurer may invest up to 0.5% of the state's total average portfolio of the state interim funds in such debt interests. The expansion allows the Treasurer to invest more of the state interim funds in those types of debts and, presumably, generate potentially greater returns for the state's portfolio. This provision has no direct fiscal effect on local governments.

Convention center tax exemption

The bill exempts real and personal property comprising a convention center from taxation if constructed or acquired after January 1, 2010, in a county with a population when construction commences of more than 1,200,000 in the most recent decennial census. In the 2000 census, the only county in Ohio with a population over 1,200,000 was Cuyahoga County. The U.S. Census Bureau's estimate of the populations of Ohio counties as of July 1, 2009, also indicates that only Cuyahoga County has a population that high. In addition, to qualify for this tax exemption, the convention center or the land on which the convention center is located must be owned or leased by the county.

Real property tax exemptions are based on use as well as ownership. Assuming the tax exemption provided by the bill includes privately owned real property constructed on county-owned land, this provision is likely to reduce tax revenues to the school district and other units of local government where the qualifying convention center is located. Depending on the size of the private development, the potential real estate tax revenue may be several millions of dollars, up to roughly $11.2 million. Loss of tax revenue to a school district because of a decline in taxable property value will generally be partly offset by increased state aid to that school district. However, if the convention center is in the Cleveland City School District, for which state aid is subject to a cap in FY 2011, or in another district subject to either the cap or on the guarantee, there would probably not be an offsetting increase in state aid in the next fiscal year. LSC does not know if the cap or guarantee will continue beyond FY 2011. Tax revenue losses to other units of local government would not be offset.

The tax exemption for personal property applies to building and construction materials and services sold to a construction contractor for incorporation into the real property comprising the convention center qualifying for real property tax exemption under this provision of the bill. The exemption would remain in effect until one calendar year after completion of construction. This tax exemption for personal property may reduce sales and use tax revenues to the state, Cuyahoga County, and the Greater Cleveland Regional Transit Authority. Depending on the size of the private development and construction costs, the potential state sales tax revenue loss is likely to be several millions of dollars, up to roughly $8.2 million. Under permanent law, state tax revenue is distributed to the GRF (94.1%), the Local Government Fund (LGF, 3.68%) and the Public Library Fund (PLF, 2.22%). In FY 2011, the GRF share is 94.35% and the PLF share is 1.97%, under a provision of temporary law. Revenue loss from the permissive local and transit authority sales taxes may be up to around $1.8 million.

Tax exemption for property leased to a school district

The bill provides that real or personal property leased to a board of education for a term of at least 50 years is exempt from taxation. It further states that the change is remedial in nature and applies to applications for tax exemption pending on the effective date of this act. The change may result in tax exemptions being granted that might otherwise be denied. It appears property in the Plymouth-Shiloh Local School District in Richland County may qualify for an exemption under this provision.

Extension of enterprise zone agreements to October 15, 2011

The bill extends the time during which local governments may enter enterprise zone (EZ) agreements from October 15, 2010 to October 15, 2011. Enterprise zone agreements authorize real and tangible personal property tax exemptions for those areas designated by the local legislative authority. Thus, the revenue loss to local governments or municipalities that grant an exemption is permissive. However, counties would lose property tax revenues for any EZ that is either created or extended by a municipal legislative authority using the authorization provided in the bill. School districts would only lose revenues on EZ agreements for which their approval is not required. (Under current law, school districts must approve agreements that exceed certain thresholds.)

Commercial activity tax (CAT)

The bill allows the Tax Commissioner and a CAT taxpayer to mutually agree in writing to waiving or extending the statute of limitations for issuing a refund or assessing a taxpayer under the CAT. The statute of limitations, under current law, is four years from the due date of a return, unless the taxpayer fails to file a return. LSC expects this provision to have minimal state or local fiscal effects.

Deferred compensation plan for regional water and sewer districts

The bill allows the board of trustees of a regional water and sewer district to offer a program of deferred compensation which allows for favorable tax treatment of the compensation that is deferred. Deferred compensation programs generally include annuities, regulated investment trusts, and mutual funds, and funds contributed to qualifying plans are exempt from federal and state income taxation, until the funds are withdrawn. Thus, the bill is likely to reduce revenue from the state income tax, by an amount dependent on the participation of employees of the regional water and sewer districts. The revenue loss from this provision is likely to be minimal. Contributions to deferred compensation plans are generally subject to the municipal income tax; thus, compensation of employees working or residing in municipalities that impose a municipal income tax will remain taxable. Regional water and sewer districts will incur costs related to the administration of the deferred compensation plans, based on the number of participants in the plans.

Other provisions

Water revolving loan funds

The bill gives the Environmental Protection Agency (EPA) additional flexibility in administering the Clean Water and Drinking Water State Revolving Loan funds. This will allow the EPA to provide funding for additional projects consistent with federal law and offer some fiscal benefit to local governments.

Methane from abandoned coal mines

Currently, methane emitted by an abandoned coal mine is included in the statutory definition of an "advanced energy resource." The bill removes methane from this definition and instead classifies it as a "renewable energy resource." The effect of this provision would be to make coal mine methane an eligible resource for the purposes of renewable energy programs and renewable energy credits. However, there is no direct fiscal effect from the change in definition.

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