OHIO LEGISLATIVE SERVICE COMMISSION

Shannon Pleiman and other LSC staff

Fiscal Note & Local Impact Statement

Bill: H.B. 494 of the 132nd G.A. **Status:** As Passed by the Senate

Sponsor: Rep. Antani **Local Impact Statement Procedure Required:** No

Subject: Specifies that a franchisor is not the employer of a franchisee or a franchisee's employees for certain social insurance programs and makes other changes

State Fiscal Highlights

- **Franchisor and franchise changes.** State agencies that administer the five state laws affected by the bill could incur some new administrative costs. These state agencies are the Department of Commerce, Department of Job and Family Services, Department of Taxation, the Bureau of Workers' Compensation, and the Ohio Industrial Commission.
- **Claims determinations.** The bill may affect certain unemployment compensation and workers' compensation claims determinations, as well as premiums and benefits under those programs.
- **Women-Owned Business Enterprise Program.** The Department of Administrative Services could incur minimal new costs to establish and oversee the Women-Owned Business Enterprise Program.

Detailed Fiscal Analysis

Franchisor and franchise changes

The bill specifies that a franchisor is not considered to be an employer of a franchisee or a franchisee's employees for purposes of five state laws. These include the: (1) Minimum Fair Wage Standards Law enforced by the Department of Commerce, (2) Bimonthly Pay Law, also enforced by the Department of Commerce, (3) Unemployment Compensation Law enforced by the Ohio Department of Job and Family Services, (4) Workers' Compensation Law enforced by the Bureau of Workers' Compensation and the Ohio Industrial Commission, and (5) Income Tax Law enforced by the Department of Taxation. The bill does, however, permit a franchisor to agree in writing to assume the role of an employer to a franchisee or a franchisee's employees for purposes of these laws.

According to the International Franchise Association's *Franchise Business Economic Outlook for 2018*, there were 26,962 franchise establishments in Ohio in 2017.[1]

The fiscal effects on state agencies responsible for carrying out the five laws mentioned above will vary based on specific circumstances in which the employer-employee relationship needs to be resolved for claims purposes. For example, under the current Unemployment Compensation Law, a franchisee's employees are treated as an employee of either the franchisor or based on a test used to determine which has control over the employee's day-to-day management. As a result, the bill may increase costs for the Ohio Department of Job and Family Services to administer the Unemployment Compensation Fund if it results in changes to employer accounts or if the Department must adjudicate disputes between franchisors and franchisees.

These changes may result in an increase or decrease in unemployment taxes brought into the Unemployment Compensation Fund based on the effect each change may have on the experience ratings of the affected employers. Likewise, under the Workers' Compensation Law, the bill in some cases might change circumstances where the Bureau of Workers' Compensation or the Ohio Industrial Commission determines that a franchisor or franchisee is the employer of record for workers' compensation claims purposes. Consequently, there may be some change in premiums collected and deposited into the State Insurance Fund. In regard to the entity responsible for withholding taxes from employees under the Income Tax Law, the bill appears to codify current practice and would have no effect on state tax revenues or by extension on local governments through the Local Government Fund.

Women-Owned Business Enterprise Program

The Department of Administrative Services (DAS) could incur minimal new costs to establish and oversee the Women-Owned Business Enterprise Program. The bill requires the Director of DAS to establish the program and adopt rules establishing (1) procedures by which a business may apply for certification as a women-owned business, (2) standards to determine when a women-owned business no longer qualifies for certification, (3) a system to make a list of women-owned businesses publicly available, (4) a process to mediate complaints and to review certification appeals, and (5) a system to assist state agencies in identifying and utilizing women-owned businesses in their contracting. Additionally, the bill requires the Director to implement an outreach program to educate potential participants about the program, develop a system of self-reporting by women-owned businesses, and create on-site inspection processes to validate qualifications of women-owned businesses. The bill also requires that a status report on the Women-Owned Business Enterprise Program be included as part of the existing annual report DAS is required to submit to the Governor and General Assembly concerning the Encouraging Diversity, Growth, and Equity (EDGE)

[1] IHS Markit Economics. *Franchise Business Economic Outlook for 2018*. January 2018. International Franchise Association, https://franchiseeconomy.com/files/Franchise_Business_Outlook_Jan_2018.pdf.

and the Minority Business Enterprise (MBE) programs. Finally, the scope of the report is broadened to include a discussion of all these programs funded with state or federal money, not just federal money received by the state for fiscal stabilization and recovery.