



# Ohio Legislative Service Commission

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## Bill Analysis

Mackenzie Damon

### Sub. H.B. 23

131st General Assembly  
(As Passed by the House)

**Reps.** Amstutz, Cera, Buchy, Burkley, Ginter, Green, Hackett, Hambley, Kraus, McClain, Reineke, Romanchuk, Ruhl, Ryan, Scherer, R. Smith

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## BILL SUMMARY

- Requires the Director of Budget and Management to recommend whether income tax rates should be permanently reduced after the Director certifies a temporary rate reduction by virtue of money accruing in the Income Tax Reduction Fund (ITRF).
  - Earmarks one-third of the income from certain oil and gas leases on state land for the ITRF.
  - Earmarks one-third of that lease income to provide capital improvements funding to subdivisions in which leased parcels are located.
  - Includes language substantively similar to recently enacted law that suspends the transfer of use tax collections from "remote sellers" to the ITRF until Congress enacts "Marketplace Fairness" legislation authorizing states to compel such sellers to collect state use taxes.
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## CONTENT AND OPERATION

### Overview

The bill makes two changes to the funding and operation of a fund used under continuing law to temporarily reduce income tax rates — the Income Tax Reduction Fund (ITRF). First, the bill authorizes the Director of Budget and Management (OBM) to recommend whether and to what extent income tax rates should be permanently reduced based on revenue credited to the ITRF from its various revenue sources. Second, the bill creates a new dedicated source of revenue for the ITRF by crediting one-third of income from certain oil and gas leases on state land to the ITRF.

In addition, the bill credits another one-third of that lease income to a new Local Royalty Fund to provide funding for counties, townships, and municipal corporations in which those leased parcels are located, to be used for capital improvements.

## **Income Tax Reduction Fund**

Under continuing law, the ITRF serves as a mechanism to provide one-year reductions in income tax rates upon the Fund's accrual of a certain amount of money. The ITRF currently may receive revenue from two dedicated sources: (1) surplus revenue that is available after the balance in the state's Budget Stabilization Fund equals 5% of annual General Revenue Fund (GRF) expenditures and certain inter-year fund carryovers and reserves are made and (2) use tax collected and remitted by remote sellers (see "**Remote seller use tax collections**," below).

By July 31 of any year, the Director of OBM must certify to the Tax Commissioner if money in the ITRF exceeds 0.35% of the amount of income tax revenue the Director estimates will be collected in the current fiscal year, and the percentage of that excess.<sup>1</sup> The Tax Commissioner then proportionately reduces the rate of the state's income tax for that calendar year by that certified percentage.<sup>2</sup>

## **Report on income tax reductions**

Within 15 days after the Director of OBM certifies that the ITRF has a substantial enough balance to temporarily reduce income rates, the bill requires the Director to issue a report to the Governor, Speaker of the House, and President of the Senate containing both of the following:

(1) Amounts credited to the ITRF in the preceding fiscal year from each of its dedicated revenue sources (see "**Income Tax Reduction Fund**," above, and "**State land oil and gas lease income**," below).

(2) Recommendations whether and to what extent income tax rates should be proportionately and permanently reduced based on revenue credited to the ITRF from those sources in the preceding fiscal year.<sup>3</sup>

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<sup>1</sup> R.C. 131.44.

<sup>2</sup> R.C. 5747.02, not in the bill.

<sup>3</sup> R.C. 131.44(B)(3).



## **State land oil and gas lease income**

The bill earmarks one-third of the income from signing fees, rentals, and royalty payments with respect to certain oil and gas leases on state land to the ITRF and one-third of such income to a new Local Royalty Fund to provide funding for counties, townships, and municipal corporations in which those leased parcels are located, to be used for capital improvements. The remaining one-third of the income is credited to the funds to which all such revenue is credited under current law, as explained below.

Under current law, with three exceptions, all income received by state agencies from an oil or gas lease entered into on or after September 30, 2011, on land owned by the agency is credited to a special fund and used to pay capital costs, including equipment and renovations and repairs of facilities, of those contributing state agencies. However, if the land is owned by the Division of Forestry, Division of Wildlife, or Division of Parks and Recreation in the Department of Natural Resources, that revenue is credited, respectively, to one of the following funds: (1) the Forestry Mineral Royalties Fund, (2) the Wildlife Habitat Fund, or (3) the Parks Mineral Royalties Fund.<sup>4</sup>

Money in the Forestry Mineral Royalties Fund and the Parks Mineral Royalties Fund must be used by the applicable Division to acquire land and to pay capital costs for facilities owned by the state and administered by that Division.<sup>5</sup> Under law unchanged by the bill, money in the Wildlife Habitat Fund is used to acquire and develop land for the preservation, propagation, and protection of wild animals.<sup>6</sup>

### **Income Tax Reduction Fund earmark**

The portion of lease revenue that the bill earmarks for the ITRF is credited initially to the GRF, and then the Director of OBM, twice annually, is required to transfer six-months' worth of that revenue from the GRF to the ITRF.<sup>7</sup>

### **Local Royalty Fund earmark**

The bill requires the Director of OBM to distribute the portion of lease revenue credited to the new Local Royalty Fund – one-third of such revenue – to counties, townships, and municipal corporations in which leased state land are located. Of this one-third share, 85% is divided and allotted to each county in proportion to the income

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<sup>4</sup> R.C. 1509.73(G)(1) and (2).

<sup>5</sup> R.C. 1503.012 and 1541.26, not in the bill.

<sup>6</sup> R.C. 1531.33, not in the bill.

<sup>7</sup> R.C. 1509.73(G)(3) and (J).



generated by leased parcels in that county. One-half of each county's allotment is further allocated and ultimately paid to the county and each constituent township and municipal corporation in proportion to each subdivision's population relative to the aggregate population of the county and each of its constituent subdivisions. The other one-half of the county's allotment is allocated and paid to those subdivisions in proportion to the number of road miles maintained by each subdivision relative to the aggregate road miles maintained by the county and each of its constituent subdivisions.<sup>8</sup> In effect, the county receives a total of one-half of the 85% share, while townships and municipal corporations split the other one-half based on their population and aggregate road miles.

The bill requires the other 15% of the Local Royalty Fund share to be paid directly to townships and municipal corporations in which leased parcels are located. Each such township or municipal corporation receives only the portion of that amount attributable to the proportionate income generated from the lease of a parcel in that subdivision.<sup>9</sup>

The Director of Budget and Management is required to make both types of payments according to a schedule prescribed by the Director.<sup>10</sup> The bill requires a county, township, or municipal corporation to use those payments exclusively to pay the costs of capital improvements.<sup>11</sup> Capital improvements are defined to be projects involving the construction, improvement, maintenance, or planning of roads and bridges, waste water treatment system, water supply systems, solid waste disposal facilities, and storm water and sanitary sewer facilities, and specifically include the acquisition or maintenance of service vehicles used for purposes of public safety, highway construction and maintenance, or maintaining public parks.<sup>12</sup>

### **Current status of oil and gas leases on state land**

Though the bill reserves one-third of such income for the ITRF and one-third for the Local Royalty Fund, because members of the Oil and Gas Leasing Commission have not been appointed as of the date of this analysis, state agencies may not currently enter into such leases. Thus, lease income will not flow into the ITRF or the Local Royalty

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<sup>8</sup> R.C. 1509.79(B), (C)(2), and (C)(3)(a).

<sup>9</sup> R.C. 1509.79(C)(3)(b).

<sup>10</sup> R.C. 1509.79(C)(4).

<sup>11</sup> R.C. 1509.79(D).

<sup>12</sup> R.C. 1509.79(A)(3).



Fund until the Governor appoints members to that Commission and leases are made (see **COMMENT**).

## **Remote seller use tax collections**

The bill reaffirms, but does not substantively change, current law with respect to earmarking "new" use tax collected from remote sellers to the ITRF.<sup>13</sup> Under continuing law, as recently changed by H.B. 64 of the 131st General Assembly, a remote seller is a seller that does not have a physical presence, or "substantial nexus," with Ohio and thus cannot be required by Ohio to collect and remit use tax from customers, pursuant to due process concerns raised in prevailing Supreme Court precedent.<sup>14</sup> However, most remote sellers would be required to collect and remit use tax if Congress were to enact so-called "Marketplace Fairness" legislation authorizing states to require remote sellers to do so.<sup>15</sup> (A bill proposing such a law currently is pending in Congress – the "Marketplace Fairness Act of 2015," (S. 698). Similar legislation has been introduced in prior Congresses but has never been enacted.)

Effectively, the current definition of remote seller ensures that the ITRF will not receive use taxes collected from anyone qualifying as a remote seller until Congress enacts "Marketplace Fairness" legislation. Because H.B. 64's remote seller provisions took effect July 1, 2015, the current version of this bill substantively achieves the same result as the remote seller provisions enacted in H.B. 64 – i.e., what is now current law.<sup>16</sup> Under both current law and the bill, transfers to the ITRF of use tax collections from remote sellers could not begin until Congress enacts "Marketplace Fairness" legislation.

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## **COMMENT**

Under continuing law, state agencies are required to follow certain procedures to lease oil or gas interests on state land on and after September 30, 2011 — the effective date of H.B. 133 of the 129th General Assembly. As part of those procedures, a state agency may enter into such a lease only if the agency consults with the Oil and Gas Leasing Commission or, after that Commission adopts rules establishing additional

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<sup>13</sup> R.C. 5741.01(R), 5741.03, and 5741.032.

<sup>14</sup> *Quill Corp. v. North Dakota*, 504 U.S. 298 (1992) (finding that a catalog seller that delivered products to North Dakota customers by an out-of-state common carrier outside the state did not have a physical presence with North Dakota and was not required to collect and remit the state's sales tax).

<sup>15</sup> R.C. 5741.01(R) (current law).

<sup>16</sup> R.C. 5741.01(R).



procedures and requirements, only if the Commission approves the nomination of that property for a lease.<sup>17</sup>

As of the date of this analysis, members of the Oil and Gas Leasing Commission have not been appointed. Because the Commission does not yet exist, state agencies are unable to obtain the agencies' required consultation with the Commission that is a prerequisite to entering into a new oil or gas lease.

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## HISTORY

ACTION	DATE
Introduced	01-28-15
Reported, H. Ways & Means	05-13-15
Passed House (78-16)	05-27-15

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<sup>17</sup> R.C. 1509.73.

