OHIO LEGISLATIVE SERVICE COMMISSION

Russ Keller

Fiscal Note & Local Impact Statement

Bill: H.B. 430 of the 132nd G.A.

Status: As Reported by House Government Accountability and Oversight

Sponsor: Rep. Schaffer

Local Impact Statement Procedure Required: Yes

Subject: Sales tax exemption for certain aspects of oil and gas production

State & Local Fiscal Highlights

	FY 2018	FY 2019	FUTURE YEARS
State General Revenue Fund			
Revenues	- 0 -	Loss of $39.8 million	Annual loss of $4.1 million
Local Government and Public Library funds (counties, municipalities, townships, and public libraries)			
Revenues	- 0 -	Loss of $1.4 million	Annual loss of $0.1 million
Counties and transit authorities			
Revenues	- 0 -	Loss of $9.3 million from reduced local sales taxes	Annual loss of $1.0 million from reduced local sales taxes

Note: The state or school district fiscal year is July 1 through June 30. For example, FY 2018 is July 1, 2017 – June 30, 2018. For other local governments, the fiscal year is the calendar year.

- The bill reduces the sales and use tax base, and thus decreases state sales tax revenue and revenue from local county permissive and transit authority sales taxes. The Ohio Department of Taxation estimates that H.B. 430 reduces GRF receipts by $39.8 million in FY 2019 and $4.1 million in FY 2020. The tax department also anticipates applicable counties will lose a combined $9.3 million in local tax receipts in FY 2019 and $1.0 million in FY 2020.
- The state sales tax revenue loss would be shared by the state General Revenue Fund (GRF, 96.66% in FY 2019 and 96.68% thereafter), the Local Government Fund (LGF, 1.66%), and the Public Library Fund (PLF, 1.68% in FY 2019 and 1.66% thereafter). Funds deposited into the LGF and PLF are distributed to counties, municipalities, townships, and public libraries according to statutory formulas and decisions by county budget commissions.
- Estimates above assume that the bill is effective July 1, 2018.

Detailed Fiscal Analysis

H.B. 430 modifies the existing sales and use tax exemption for property used directly in producing oil and natural gas. Existing law exempts the sale or use of tangible personal property used "directly" in the production of crude oil or natural gas. The bill removes the qualification that property be used "directly" in the production of crude oil or natural gas in order for its sale to be tax exempt. The bill also adds some definition to what constitutes the "production" of oil and gas by substituting a term – "production operation" – for "production."

H.B. 430 also specifies that property used to control water pollution may qualify for existing property tax and sales and use tax exemptions even if the Department of Natural Resources is the agency that approves the property as qualifying pollution control property. Current law provides that the Ohio Environmental Protection Agency is qualified to make such approvals, as is "any other governmental agency having authority to approve installation of" water pollution control facilities.[1]

The bill states that its changes are intended to be "remedial" and to apply both prospectively, and retrospectively to June 30, 2010.

The bill's effect on the scope of the exemption is not clearly apparent from the statutory language because the scope of the current exemption is determined largely by an administrative rule and prior decisions by courts and the Board of Tax Appeals. LSC staff found published reports that costs associated with drilling wells in Marcellus shale amount to approximately $9.7 million per well, of which about $1.9 million was described as related to "acquisition and leasing" or "permitting." LSC staff are uncertain about the taxable status of the remaining cost items, either under Department of Taxation administration of current law or under H.B. 430, so we lack sufficient information to provide an independent estimate of the revenue effects of the bill.

The Department of Taxation estimates that the bill will reduce GRF receipts by $39.8 million in FY 2019, primarily due to the retroactive provision of the bill,[2] and $4.1 million annually in years thereafter. The Local Government Fund (LGF) and Public Library Fund (PLF) would lose $1.4 million in FY 2019 and $0.1 million in successive years. For those counties in which oil and gas production occurs, the local sales and use tax levied by those counties would lose a combined $9.3 million in FY 2019, and $1.0 million in future years. The tax department assumed the legislation would become effective on July 1, 2018 for purposes of its estimate.

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[1] R.C. 5709.20(L).

[2] To the extent that the bill's modification of the exemptions broadens their scope, transactions that were taxable between June 30, 2010, and the bill's effective date presumably would be deemed to be tax exempt, but the bill does not specifically direct how the tax on past transactions would be resolved.