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Fiscal Note & Local Impact Statement

Bill: H.B. 489 of the 132nd G.A. **Status:** As Passed by the House

Sponsor: Rep. Dever **Local Impact Statement Procedure Required:** Yes

Subject: Creates the Ohio Financial Institutions Reform Act and modifies the calculation of the financial institutions tax

State & Local Fiscal Highlights

- **Financial institutions tax.** For tax years beginning in 2019 or thereafter, the bill reduces the financial institutions tax (FIT) base. Thus, the bill would reduce revenue from the tax, potentially by several millions of dollars per year. Revenue from the FIT is deposited into the GRF.
- The revenue loss from the FIT would be shared by the GRF (96.68%), the Local Government Fund (LGF, 1.66%), and the Public Library Fund (PLF, 1.66%) under permanent law. 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.
- **Department of Commerce.** The Division of Financial Institutions within the Department of Commerce enforces the bill's provisions that make changes to state banks and credit unions regulation. The bill may minimally decrease examination expenses incurred by the Division. Examination expenses are paid from the Banks Fund (Fund 5540) and the Credit Unions Fund (Fund 5520).

Detailed Fiscal Analysis

Financial institutions tax changes

Continuing law levies the financial institutions tax (FIT) on the basis of a financial institution's "total Ohio equity capital," defined to be the institution's total equity capital multiplied by the proportion of the institution's gross receipts attributed to doing business in Ohio to gross receipts generated anywhere (this ratio is the apportionment ratio). Total Ohio equity capital is taxed under a three-tier rate structure: a rate of 0.8% applies to the first $200 million of a taxpayer's total Ohio equity capital, a rate of 0.4% applies to total equity capital greater than $200 million and less than $1.3 billion, and a rate of 0.25% applies to total Ohio equity capital greater than or equal to $1.3 billion. A minimum FIT tax of $1,000 applies if a taxpayer's liability is below that level.

For tax years beginning in 2019 or thereafter, the bill reduces the tax base upon which the FIT is computed for any financial institution in a specific way: the tax base would be limited only to the extent that the total equity capital does not exceed 14% of the financial institution's total assets shown on the reporting person's FR Y-9 or call report as of the end of the taxable year. Federal reporting requirements for banks and bank holding companies depend on how those financial institutions are organized and the number of subsidiaries (one-tiered, multi-tiered, nonbank firms) and the size of consolidated assets. Holding companies with total consolidated assets of $1 billion or more may file FR Y-9C or FR Y-9LP, or both, depending on whether they own or control, or are owned and controlled by other holding companies. Holding companies with total consolidated assets of less than $1 billion file FR Y-9C or FR Y-9SP, or both. Subsidiaries of holding companies may also file separately various FR Y-9C, FR Y-9LP, or FR Y-9SP. Financial institutions most likely to qualify for a reduction in tax base would be those with total Ohio equity capital below $200 million in assets. Taxpayers in that lowest tier of financial institutions (451) paid on average about $150,000 in tax year (TY) 2015. A few firms within the group of 21 taxpayers with total Ohio equity capital between $200 million and $1.3 billion may qualify for reduced tax liabilities under this provision. Taxpayers in that group of financial institutions paid on average about $2.6 million in TY 2015. Based on their most recent financial statements, the largest FIT taxpayers, those with equity capital exceeding $1.3 billion, are unlikely to qualify under the bill. However, LSC cannot rule out that some in that group may qualify.

The bill would decrease revenue from the FIT potentially by several millions of dollars per year. LSC is unable to provide a more precise estimate due to the lack of access to tax returns filed by financial institutions.[1] The reduction would be dependent on the number of qualifying taxpayers and their excess equity capital, both of which may change from one year to the next.

The fiscal loss would be shared under permanent law by the GRF (96.68%), the Local Government Fund (LGF, 1.66%), and the Public Library Fund (PLF, 1.66%). For FY 2019, the GRF would receive 96.66% of FIT receipts and the PLF, 1.68%, under a provision of H.B. 49, the main operating budget act for the current biennium. 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.

[1] The FR Y-9C is filed on a consolidated basis, while FR Y-9LP and FR Y-9SP are filed on an unconsolidated parent company basis only. For purposes of the FIT, the financial institution (taxpayer) means the group consisting of all entities included in an FR Y-9; if two or more entities are consolidated for purposes of filing a call report, the taxpayer means the group of all entities included in the call report. These various arrangements determine the apportionment ratio in the calculation "total Ohio equity capital" and the FIT liability.

Financial institutions regulation

Frequency of examinations

The bill contains a provision that may decrease the number of bank and credit union examinations to be carried out by the Division of Financial Institutions within the Department of Commerce. At the end of March 2017, there were 81 state banks and 132 credit unions licensed by the Division and subject to examination at least once every 24 months or as often as the Superintendent of Financial Institutions considers necessary on each state bank and credit union. Instead, the bill generally prohibits the Superintendent from conducting examinations more often than once every 24 months for a state bank or credit union that meets the following conditions: (1) it maintains assets of $10 billion or less, and (2) it maintains a composite rating of one (the highest rating) under the uniform financial institutions rating system. As of the beginning of February 2018, 30 banks and 16 credit unions meet these conditions. However, more frequent examinations may be carried out if (1) there is reasonable cause to believe that there is a risk of harm to the bank, or (2) the Division participates with other financial regulatory authorities in a joint, concurrent, or coordinated examination. As of March 2018, the Division employs 29 state bank examiners and 14 credit union examiners. Examinations are funded by assessment fees which are based on total assets of banks and credit unions. These fees are deposited into the Banks Fund (Fund 5440) and Credit Unions Fund (Fund 5520).

Mortgage servicer registration

The bill requires a nonexempt mortgage loan servicer to register every principal office and branch office with the Division of Financial Institutions under the regulatory umbrella of the Ohio Residential Mortgage Lending Act, effective March 23, 2018. That act inadvertently exempted entities involved exclusively in mortgage loan servicing from this registration requirement, something that is required under current law, the Ohio Mortgage Loan Act (OMLA) effective through March 22, 2018. H.B. 489 effectively continues this registration requirement. In FY 2017, there were 1,691 OMLA registrants, including both mortgage servicers and mortgage lending entities. The annual renewal fee is $500 and is deposited into the Consumer Finance Fund (Fund 5530).

Other provisions

There are several other financial institution provisions that may have a minimal fiscal effect. One provision includes prohibiting a person from using the name of a credit union without its express written permission in promotional material in any way that may mislead or cause another person to be misled into believing that the person issuing the promotional material is associated with the credit union. A person who violates this prohibition is subject to a civil penalty of up to $10,000 for each day the violation is committed. It is unclear how frequently this violation may occur. Any civil penalties that stem from such cases would be deposited into the Credit Unions Fund (Fund 5520). Another provision under the bill provides for certain conditions when a bank or credit union may not be held civilly liable or subject to sanction by the

Superintendent in the event of a "bona fide error." If these certain conditions are not met by a bank or credit union, a consumer injured by the error has a cause of action to recover the damages; however, the action cannot be maintained as a class action. It is unclear what effect this would have on courts and the number of cases initiated.

Data analytics

The bill authorizes the Speaker of the House of Representatives or the President of the Senate to request the Legislative Service Commission (LSC) to arrange for "data analytics" to be conducted on any publicly available data regarding state banks, credit unions, or any other specifically licensed or registered consumer finance companies to assist the General Assembly in proposing or evaluating legislation. To fulfill this responsibility, the bill permits LSC to retain economists, financial analysts, and any other necessary professionals on a consulting basis. This provision may increase LSC's administrative costs depending on the number of requests and the extent of the research requested.

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