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OHIO LEGISLATIVE SERVICE COMMISSION

Office of Research
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Legislative Budget
Office

H.B. 163
133rd General Assembly

Fiscal Note & Local Impact Statement

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Version: As Reported by House Public Utilities

Primary Sponsor: Rep. Brinkman

Local Impact Statement Procedure Required: No

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Highlights

- Local Government Fund (LGF) payments would be withheld from municipal corporations declared to be “noncompliant municipal corporations” by a court of common pleas. Generally the term is associated with municipalities that engage in certain water and sewer practices with respect to extraterritorial service. The amounts withheld are to be distributed to political subdivisions affected by such municipal corporations’ practices as declared by the court.
- The bill would decrease LGF funding to some municipalities and increase such funding to other municipalities or townships by corresponding amounts. LGF funding statewide would be unaffected.
- The bill would make noncompliant municipalities ineligible for certain state grant and loan programs related to improving sewer and water services.
- The bill may increase the Department of Taxation’s administrative expenses related to LGF distributions. If there is any increase in such costs, it would likely be minimal.
- The bill may minimally increase certain counties’ administrative expenses due to a potential increase in the number of court hearings and declarations involving municipalities that provide water and sewer service outside of their territories.

Detailed Analysis

The bill creates judicial procedures for withholding certain state funding from municipal corporations that engage in certain water and sewer practices with respect to extraterritorial service. Under the bill, a court of common pleas must find that a defendant municipal corporation is a “noncompliant municipal corporation” if the court finds that any other subdivision that is a party to the action establishes, by a preponderance of the evidence, that

the defendant municipal corporation engages in either of the following practices: (1) charging a customer class for property located in the other subdivision higher rates for water or sewer services than for the same customer class for property located in the defendant municipal corporation, unless those higher rates (a) are calculated pursuant to generally accepted industry practices or (b) do not exceed 125% of the rates for the same customer class for property located in the defendant municipal corporation either at that time or on the effective date of the bill or (2) requiring, as a condition of providing water or sewer services to property located within the subdivision, that the subdivision provide direct payments to the defendant municipal corporation, unless the direct payments are reasonably related to the cost of providing water or sewer services to property within the territory of that subdivision.¹ The bill defines an “affected subdivision” as a municipal corporation or township that has been declared to be affected, or whose residents have been declared affected, by one of the above practices by a court of common pleas.

Within a specified time limit, any township or municipal corporation declared to be an affected subdivision may certify a copy of the court’s declaration to the Tax Commissioner. Upon receipt of such declaration, the Commissioner is required to cease direct payments from the Local Government Fund (LGF) to the noncompliant municipal corporation and reduce LGF payments made to the county in which it is located; county officials are directed to cease making payments from the county undivided local government fund to the noncompliant municipal corporation upon notification from the Commissioner. Subsequently, the withheld LGF revenues would be allocated to the affected subdivisions according to each subdivision’s population.

The bill also requires the Commissioner to forward a copy of the declaration to the Director of the Environmental Protection Agency (EPA), the Director of the Ohio Public Works Commission (OPWC), the Chairperson of the Ohio Water Development Authority (OWDA), and the Director of the Development Services Agency (DSA). The bill provides that those recipients may not award any loan, grant, or other form of financial assistance to a noncompliant municipal corporation identified in the declaration for the purpose of improving that municipal corporation’s water or sewerage system, except for awards of federal funds required by federal law or guidelines to be awarded to the municipal corporation for that purpose.

The bill provides that the municipal corporation would requalify for LGF distributions and such financial assistance if a court declares that it no longer qualifies as a noncompliant municipal corporation.

Fiscal effect

The bill would reduce revenue, from the LGF and other sources, for any municipal corporation determined to be noncompliant by a court of common pleas. Any withheld payments from the LGF would be distributed to affected political subdivisions. Though some

¹ Any municipal corporation or township may file an action for declaratory judgment to declare a municipal corporation a noncompliant municipal corporation. But an action cannot be filed if the higher rates or direct payments made by the political subdivision are governed by a contract between the two political subdivisions in effect on the effective date of the bill.

municipalities may currently engage in practices prohibited by the bill, they could discontinue such practices if the bill were enacted, thereby avoiding any penalties. The revenue effects on any particular municipality depend therefore on its current policies regarding provision of water and sewerage services outside its territory and whether its officials decide to continue those practices. As explained above, any reduction in LGF funding to the noncompliant municipal corporation would go to affected subdivisions.

The bill may minimally increase certain counties' administrative expenses due to a potential increase in the number of court hearings and declarations involving municipalities that provide water and sewer services to other political subdivisions.

The only fiscal effect on the state appears to be any administrative costs that may be related to withholding funds from a municipality deemed noncompliant. Such administrative costs could affect the Department of Taxation, EPA, OPWC, OWDA, or DSA. If there is any increase in such costs, LBO staff think it would likely be minimal.

Background information

Under existing law, 1.66% of total GRF tax revenue is credited to the LGF in each month.² Subsequently, the state allocates monthly distributions from the LGF to each county undivided local government fund (CULGF). Moneys in a CULGF are distributed to each political subdivision in the county, including county government itself, based on the county's own determination. A municipality with a population of 1,000 or more also receives direct distributions from the LGF. The LGF direct distributions are based on a municipality's population, except that cities with a population of more than 50,000 are capped at that number, i.e., they are each considered to have a population of only 50,000 for purposes of calculating their share of LGF direct distributions. In addition, eligible townships and small villages receive supplemental funding from the LGF totaling \$1 million each month, taking this money out of the LGF share that was historically directly distributed to municipalities.³ LGF distributions to each county and municipality are currently made by the Department of Taxation through an electronic funds transfer (EFT).

Upon receiving certification of a court's declaration of a noncompliant municipal corporation from an affected political subdivision, the Tax Commissioner is required to (1) stop any direct payments it makes monthly to the municipal corporation from the LGF and (2) notify the county auditor and county treasurer of the noncompliant municipal corporation that they must cease payments from its CULGF to such municipal corporation. Upon receiving notice from the Commissioner, the bill requires the county treasurer to suspend payments from the CULGF to the noncompliant municipal corporation. The bill specifies that payments can resume after the Commissioner provides a notice indicating that the noncompliant municipal corporation is no longer declared by a court to be noncompliant.

² This percentage is the percentage in codified law. Uncodified provisions of H.B. 166 of the 133rd General Assembly increased the percentage during the current biennium to 1.68% for the LGF and 1.70% to the PLF. Under current law, the percentages will both revert to 1.66% beginning in July 2021.

³ The small village and township supplement is distributed through CULGFs. LGF distributions to each county and municipality are currently made by the Department of Taxation through an EFT.

In calendar year 2018, LGF allocations to a county, township, or municipal corporation ranged between several hundred dollars to a number of small villages and townships, to over \$10 million for each of Cincinnati, Cleveland, and Columbus, and Cuyahoga, Franklin, and Hamilton counties.