



Ohio Legislative Service Commission

Bill Analysis

Sam Benham

H.B. 390

131st General Assembly
(As Introduced)

Reps. Schaffer and Retherford, Amstutz

BILL SUMMARY

- Exempts from sales and use tax the sale of natural gas by a municipal gas company and applies the exemption retroactively.

CONTENT AND OPERATION

Municipal gas company sales exemption

The bill exempts from state and local sales and use taxes natural gas sold to customers by a municipal gas utility – defined as a municipally owned or operated system for distributing natural gas.¹ The exemption applies to sales occurring before or after the bill's effective date (see **COMMENT**, below).²

Continuing law exempts from sales and use tax sales of natural gas by a "natural gas company," which is broadly defined to include any entity that engages in the business of supplying or distributing natural gas for lighting, power, or heating purposes to in-state consumers.³ However, the statute governing which entities are natural gas companies for this purpose does not apply to municipal corporations.⁴

¹ R.C. 5739.01(RRR) and 5739.02(B)(7).

² Section 3.

³ R.C. 5727.01, not in the bill.

⁴ R.C. 5727.05.

COMMENT

Section 3 of the bill applies the bill retroactively to all sales made before the bill's effective date, without limitation. Section 28, Article II of the Ohio Constitution provides that "The General Assembly shall have no power to pass retroactive laws" This provision prohibits the General Assembly from enacting laws imposing new substantive duties and obligations upon a person's past conduct and transactions. A law may run afoul of this prohibition if it impairs or takes away vested rights, affects an accrued substantive right, or imposes new or additional burdens, duties, obligations, or liabilities as to a past transaction, among other things.⁵

To the extent that Section 3 would cause counties or transit authorities to refund their sales and use tax collections from prior municipal gas sales, it has the potential of violating this prohibition.⁶

HISTORY

| ACTION | DATE |
|------------|----------|
| Introduced | 11-05-15 |

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⁵ *State v. White*, 132 Ohio St.3d 344 (2012).

⁶ See *Commissioners v. Rosche Bros.*, 50 Ohio St. 103 (1893); *State ex rel. Crotty v. Zangerle*, 133 Ohio St. 532 (1938); *Bd. of Educ. of the Cincinnati Sch. Dist. v. Hamilton County Bd. of Revision*, 91 Ohio St.3d (2001).

