

Ohio Public Law Update

July 2013

Governor Kasich Signs Fiscal Years 2014-2015 Operating Budget Into Law

Governor John Kasich vetoed 22 provisions before ultimately signing Amended Substitute House Bill 59 – Fiscal Years 2014-2015 Operating Budget on June 30. One veto benefited municipalities as it eliminated restrictions on municipalities' ability to use buffer zones of vegetation to protect sources of public drinking water from contamination. Also of particular importance to local governments is that the line-item pertaining to the Local Government Fund was not reduced during this budget process. That line-item is funded at a total of \$363 million and \$376.4 million in Fiscal Year 2014 and Fiscal Year 2015, respectively. Lastly, the Tangible Personal Property Tax will also be reimbursed at the levels established in Fiscal Year 2013.

The final version of the bill sets General Revenue spending at approximately \$62 billion for the biennium – \$30.3 billion for FY14 and \$31.7 billion for FY15. The Operating Budget did not include the Medicaid reform language, the broadening of the sales tax base to include services or a severance tax increase, but did make significant changes to Ohio's tax law provisions noted below. Funding for the Local Government Fund (LGF) is determined as a percentage of the estimated revenue projected to be collected with respect to state tax receipts. It is unclear at this time how the personal income tax reduction along with increase in the state sales tax percentage will impact the LGF in future years. The major state tax changes in Amended Substitute House Bill 59 include the following:

- Eliminates the state's 12.5% share on local property tax rollbacks for new or replacement levies and bond issues approved at or after the November 2013 election, but would not affect existing levies and bond issues and renewal levies approved in the future.
- Provides for a 10% personal income tax reduction over the next three years.
- Limits the small business tax exclusion on the first \$250,000 instead of \$750,000.
- Increases state sales tax rate from 5.50% to 5.75% beginning September 1, 2013.
- Changes the homestead exemption act by limiting new entrants to individuals with an income lower than \$30,000 year, but grandfathers everyone else already claiming the exemption.
- Creates the Earned Income Tax Credit (EITC) for those earning less than \$10,000 and limits the personal exemption credit to those earning less than \$30,000.
- Permits sales tax to be applied to magazine subscriptions and digital goods such as music and e-books.
- Retains the Commercial Activity Tax (CAT) 0.26 percent rate for receipts greater than \$1 million.
- Establishes new minimum tax payments for the CAT of \$800 for businesses with receipts from \$1 million to \$2 million; \$2,100 for businesses with receipts between \$2 million and \$4 million; and \$2,600 for businesses with receipts of more than \$4 million.

Other specific legislative items in the Operating Budget pertaining to local entities include the following:

- **Open Meetings Law Exception for Discussion of Local Economic Development Project Applications** – Allows a public body to hold an executive session to discuss limited confidential information as long as certain criteria are met and the purpose is to consider the terms of an application for economic development assistance to be provided or administered by a local government, including tax increment financing (TIF), enterprise zone, community reinvestment area and joint economic development district (JEDD) incentives.
- **County Land Reutilization Corporations** – Allows a board of county commissioners, a county auditor and a county treasurer each to enter into a contract with a county land reutilization corporation to hire employees to provide services to the corporation. Specifies that those employees remain employees of the county for the duration of the services provided to the county land reutilization corporation under the contract.
- **County Recorder Funding for Technology Needs** – Revises the proposal procedure for which a county recorder may request funding from the board of county commissioners and also increases the maximum dollar amount of specific filing fees for funding technology needs from \$7 to \$8 of the total base fee collected for filing certain documents. Requires that the money be deposited in the recorder's technology fund.
- **County Auditor's Withholding of Funds to Pay Debt Service Charges** – Requires the county auditor, upon demand of the Treasurer of State while holding an obligation purchased from a county, township or municipal corporation, to withhold county, township or municipal corporation funds in an amount sufficient to pay debt service charges on the obligation.
- **New Community Authorities** – Provides that the organizational board of commissioners for a new community district that is located entirely within the boundaries of a municipal corporation is the legislative authority of that municipal corporation. Allows the organizational board of commissioners to adopt an alternative method of selecting members of a board of trustees.
- **Allocation of Lodging Tax Revenue by Convention Facilities Authorities** – Authorizes convention facilities authorities (CFAs), in counties with a population of between 80,000 and 90,000 according to the 2010 Census, to allocate a portion of lodging tax revenue (not exceeding 15% of the total revenue from the tax in the preceding year) to county and municipal tourism facilities and programs, the improvement and maintenance of county fairgrounds, and any other purpose connected with the use of a county fairground.
- **Local Park Use of Revenues from the Sale or Lease of Mineral Rights** – Requires any royalties or other moneys resulting from the sale or lease of mineral rights in township parks, municipal parks or metropolitan park districts to be deposited into a special fund established by the board of park commissioners or municipal legislative authority. Requires the fund to be used exclusively for maintenance and acquisition of park lands.
- **Joint Economic Development Zone Income Tax Revenue Uses** – Authorizes municipal corporations and townships that enter into a joint economic development zone (JEDZ) contract specific to R.C. 715.691 to use income tax revenue collected pursuant to the contract for the general purposes of a township that is subject to the contract, instead of existing law that allows the revenue to be used only for purposes of the JEDZ or for the general purposes of the municipal corporations that are a part of the contract.
- **Sale of Real Property by Cities** – Authorizes nonchartered cities to sell real estate no longer needed for city purposes to a board of county commissioners without complying with a law that otherwise requires advertising and competitive bidding. Requires that the sale is authorized by ordinance, approved by a two-thirds vote of the legislative authority of the city and approved by the board or officer responsible for the real estate.

- **Tax Levy for Fairs** – Authorizes a board of county commissioners to place on a ballot a tax levy in excess of ten mills for operating expenses of an agricultural fair that is operated by a county or independent agricultural society. Allows a board of county commissioners to place on a ballot a tax levy in excess of 10 mills for any combination of agricultural fairs, soil and water conservation district program funding, and the OSU Extension Fund.
- **TIF Funds to Pay for Township Public Safety Expenses** – Authorizes townships that have, at any time, adopted a resolution exempting real property from taxation using a TIF to use unencumbered money in the TIF fund to pay for current public safety expenses. Requires the township to reimburse the fund by the time TIF exemptions expire, which may last up to 30 years.
- **Allocation of County Lodging Taxes to Convention and Visitors' Bureaus** – Requires that lodging tax revenue distributed by a county to a convention and visitors' bureau in existence must be used solely for tourism sales, marketing and promotion, and their associated costs. Exempt from this requirement is lodging tax revenue previously pledged to the payment of debt service charges on bonds, notes, securities or lease agreements.
- **Community Reinvestment Areas: Pre-1994 Rules Application** – Specifies the types of amendments that, if made to a community reinvestment area (CRA) ordinance or resolution adopted before July 22, 1994, cause the CRA to lose its grandfathered status and also specifies other amendments that do not count towards the two amendment limitation.
- **Underground Storage Tank Revolving Loan Program** – Creates the Underground Storage Tank Revolving Loan Program, to be administered by the State Fire Marshal. Requires that interest-free loans be made under the Program to certain political subdivisions, if the political subdivision is the owner but not the operator of the tank, or the owner or operator cannot be identified or cannot pay for the action. Permits a political subdivision to take legal action to recover costs incurred if the tank owner or operator is identified or is determined to have been or be able to pay the costs of action taken by the political subdivision.
- **Tax Increment Financing (TIF) Exemption Date Triggers** – Allows an ordinance authorizing a tax increment financing (TIF) exemption for multiple parcels to specify that the exemption begins in the tax year in which the value of the exempt improvement exceeds a certain amount or in which one or more improvements are completed. Also allows a TIF ordinance granting exemption for more than one parcel to specify that the exemption of different parcels begins in different tax years.
- **Cuyahoga County Alcoholic Beverage and Cigarette Taxes** – Authorizes Cuyahoga County to renew county alcoholic beverage and cigarette taxes that are set to expire in 2015 and allows the county to propose to renew the expiring taxes for up to 20 years by adopting a resolution to do so on or before September 15, 2015 that must ultimately be approved by county voters.
- **Township Use of Motor Fuel Tax Revenue** – Allows a township to use its distribution of motor fuel tax revenue to service bonds issued to pay for the purchase of road machinery and equipment or the planning, construction and maintenance of buildings that house such equipment.
- **Transportation Improvement District Agreements with Adjacent Counties** – Authorizes a Transportation Improvement District (TID) to enter into an agreement and undertake a project that is located wholly or partially in a contiguous county other than the county that created the TID and authorizes a board of county commissioners that did not create the TID to enter into such an agreement with a contiguous TID if the board of county commissioners that created the TID also enters into the agreement. Specifies that a TID is not prohibited from undertaking a project in a county that did not create the TID if it is undertaking a project with one or more other TIDs.

- **Refundable Job Retention Tax Credit** – Extends the refundable job retention tax credit to eligible businesses whose principal place of business is not located in the same political subdivision as the capital investment as long as the business maintains a unit or division with at least 4,200 employees at the project site.
- **Impact Facility Agreements Under County Sales and Use Taxes** – Extends the date, from June 1, 2007 to June 1, 2015, that a county and business may enter into an agreement to construct an "impact facility" in the county and the county agrees to remit to the business up to 75% of the revenue from certain county sales taxes collected on retail sales made at the facility. Lowers the investment requirement to \$30 million and decreases the area within which at least 50% of the facility's expected customers reside to within 50 miles.

Other Legislation

The following bills also were enacted at the end of June:

- House Bill 1 (Governor signed June 27, 2013) – Requires local workforce investment boards to use OhioMeansJobs as its job placement system. Each county must name its job placement system OhioMeansJobs [county name] County.
- Senate Bill 1 (Governor signed July 11, 2013) – Creates the OhioMeansJobs Workforce Development Revolving Loan Program funded by a portion of the casino license fees for adult training programs.
- Senate Bill 112 (Governor signed July 11, 2013) – Extends the enterprise zone tax abatement program two years to October 15, 2015.

Municipal Income Tax Proposal Held Over Until Fall

Representative Peter Beck (R-Mason), Chairman of House Ways and Means Committee, has decided to host further hearings over the summer on legislation that seeks to modify Ohio's municipal income tax code. House Bill 5 has been the source of numerous interested party meetings and constant discussion between municipalities and several business oriented groups. There remain significant issues, including the net operating loss, occasional entrant, treatment of pass through entities and senior executive retirement plans. The Chairman is compiling a compromise bill that he intends to vet through a hearing process over the summer. It is very likely that some version of House Bill 5 will pass early this fall.

Recent Decisions of Interest

The United States Supreme Court held that conditioning the issuance of a land use permit on the landowner funding an offsite mitigation project resulted in an unconditional taking without just compensation, because the condition did not have an "essential nexus and rough proportionality to the effects of the proposed use of the property at issue." *Koontz v. St. Johns River Water Management Dist.*, No. 11-1447 (United States Supreme Court).

Public records request for specific terms of tenants' commercial leases in a public market was properly denied because lease information constituted trade secrets, which are exempt from disclosure as public records under Sections 149.43(A)(1)(v) and 1333.61 of the Ohio Revised Code. *State ex rel. Luken v. Corp. for Findlay Market of Cincinnati*, 2013-Ohio-1532 (Supreme Court of Ohio).

The specific provisions of Section 4501.27 of the Ohio Revised Code and Section 4501:1-12-02(D)(2) of the Ohio Administrative Code, which provide for the restricted disclosure of certain

personal information about an individual that the bureau of motor vehicles obtained in connection with a motor vehicle record under certain circumstances, prevail over the general provisions providing for the disclosure of public records under Section 149.43 of the Ohio Revised Code. *State ex rel. Motor Carrier Serv., Inc. v. Rankin*, 2013-Ohio-1505 (Supreme Court of Ohio).

Photos taken by traffic enforcement cameras that the company that maintained the cameras and initially reviewed the traffic photos sent to city to ultimately determine if a violation had occurred were public records under Section 149.43(A)(1) of the Ohio Revised Code, regardless of whether the photos resulted in a traffic citation. *State ex rel. Rhodes v. Chillicothe*, 2013-Ohio-1858 (Ohio App. 4th Dist.).

Section 3717.53 of the Ohio Revised Code – which, among other things, prohibited local legislation (i) relating to the provision or nonprovision of food nutrition information or consumer incentive items at food service operations or (ii) banning or restricting food at food service operations based on the food nutrition information – unconstitutionally limits a municipality's home rule police powers, because it is not part of a comprehensive statewide legislative enactment and amendments to the statute violate the one-subject rule. *Cleveland v. State*, 2013-Ohio-1186 (Ohio App. 8th Dist.).

Under Sections 307.12, 6103.02 and 6103.20 of the Ohio Revised Code, a board of county commissioners may sell water to oil and gas drilling companies but may not enter into a multi-year contract to have a for-profit company broker the sale of water by the county to oil and gas drilling companies. *2013 Op. Att'y General No. 2013-019*.

Under Section 7.12(A)(5) of the Ohio Revised Code, when a political subdivision is required to publish a legal notice in a newspaper of general circulation, the newspaper in which the notice is published must be circulated generally by proof of the filing of a United States Postal Service "Statement of Ownership, Management, and Circulation" (PS Form 3526) with the local postmaster or by proof of an independent audit of the publication performed within 12 months immediately preceding publication of the legal notice. *2013 Op. Att'y General No. 2013-015*.

The Attorney General provides guidance on leave donation programs established by the county commissioners and elected county officials under Section 124.391 of the Ohio Revised Code when the elected county appointing authority is required to participate in the county commissioners' program. *2013 Op. Att'y General No. 2013-013*.

Political subdivisions reporting in accordance with Generally Accepted Accounting Principles may have to calculate the historical cost of a capital asset. The consumer price index (CPI) for years ranging from 1935 to 2012 (provided by the Auditor of State) may be used for such calculations. The formula to compute the estimated historical cost of an asset using the CPI is as follows: Estimated Current Cost x Index Rate for Estimated Year of Acquisition ÷ Index Rate for Current Year = Estimated Historical Cost. *Auditor of State Bulletin 2013-001*.

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