



# OHIO TOWNSHIP ASSOCIATION

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## House Ways & Means Committee

### HB 64

### Interested Party Testimony

March 4, 2015

Good morning Mr. Chairman and members of the Subcommittee. On behalf of the Ohio Township Association (OTA), thank you for the opportunity to testify before you to express our views on tax provisions included in House Bill 64, the biennial budget bill.

#### **Proposed Increase in LGF Revenue**

Members should note that the OBM forecasts show significant increases in the amount of LGF revenue to be received; however, the methodology that is used to accomplish these increases is based on the premise that the General Assembly supports various forms of tax changes proposed by the Governor. One of those proposed changes, to the Kilowatt Hour (KWH) tax, will increase state GRF by a projected \$65.3 million, but will at the same time reduce the size of the LGF and PLF by \$4 million. Likewise, while it is laudable to lower the personal income tax rate (PIT), note that most township residents are already not subject to a municipal income tax and each reduction of the state level PIT has an impact on local governments. When the PIT is reduced, lower amounts are collected and added to the overall general revenue fund (1.66% of the GRF funds the LGF). If the political will of the General Assembly is to modify the KWH tax and lower the PIT, we ask that hold harmless language be added to protect the distribution of resources and the continued work of local governments.

#### **Severance Tax**

The OTA appreciates that the Administration recognized that with a proposed increase in the severance tax a portion must be earmarked for local governments for infrastructure and long-term economic development purposes. Make no mistake the activities of the oil and gas industry related to fracking are occurring in township jurisdictions. All of the 779 producing wells in the Marcellus and Utica shale play are in townships. According to the latest report from ODNR released last week, those wells produced 3.6 million barrels of oil in the fourth quarter of 2014, an increase of 545,000 barrels over the previous quarter. Gas production was 164.8 billion cubic feet of natural gas, up 33 billion cubic feet from the 3rd quarter of 2014. An additional 116 wells were brought into production in the last quarter of 2014. We do not object to this activity; however, as you have heard me testify in the past, our members want to insure that the roads, bridges and water supplies that our residents rely on are not degraded and left in an unusable position after the activities are completed.

However, we understand that the level of proposed severance taxation is being met with resistance in the General Assembly and is higher than what this chamber proposed last session. The OTA will not

comment on an appropriate level of taxation. I must remind you that in last year's proposal there were hold harmless provisions added to protect local governments since HB 375 contained income tax cuts in addition to the severance tax increase. In the House Bill 64 severance tax proposal these provisions were not included. We would request inclusion of language to protect the LGF if it is the will of the committee to execute any change to the current severance taxation and to reduce PIT at the same time.

We appreciate the fact that HB 64 specifically allocates a portion of the severance tax revenue for local governments. However, we believe the Ohio shale products regional commission proposed in the bill should be composed primarily of local government officials. We would also suggest that townships and other local governments be given notice and the opportunity to present evidence of local needs prior to allocation of funds to local governments within the county.

#### **Removal of Sales Tax Collection Exemption for Political Subdivisions**

Included in the budget proposal is language that eliminates an exemption in current law providing a specific exemption from sales and use taxes on any sale of a service by the state or any of its political subdivisions. Local governments would have to tax any sales of services meeting the definition of taxable services such as replacing a culvert for a resident, recreation facility fees and contracting police services for outside events. We do not support this expansion of government, especially if it is government to government services that are being provided, nor do we want to charge our residents an additional surcharge to utilize the services that we provide to them. Current law should prevail in this instance.

#### **Increase in Tobacco Tax**

Ohio levies a charge on every person desiring to engage in the wholesale or retail business of trafficking in cigarettes. The township in which the charge originates shall receive 37.5% of the total wholesaler fees and 62.5% of the total retailer fees. The proposed increase in the tobacco tax will have a significant impact on the townships located in border counties. The \$1.00 increase in the cigarette tax and the 60% increase in the OTP tax and the brand new tax on vapor will lead to downstream negative results that the Administration and the Tax Department are not accounting for in their calculations. First, Ohio will be the highest taxed state of our neighbors for each of these categories. Research shows increases in these taxes will cause cross-border sales and a loss of revenue in Ohio. Included in the cross-border sales losses are not just tobacco products, but sales of gasoline, which taxation assists in funding the maintenance of township roads. Additionally, there is anticipated loss of employment for residents in these border county townships coupled with the possibility of loss of retail establishments that whittle away the property tax base and affect the quality of life of township residents.

### **Phase Out of TPP & Public Utility Dereg Reimbursements**

Townships are partially reimbursed for the loss of TPP tax revenue due to the elimination of the TPP tax back in 2005 as part of a tax reform. Replacement payments are based on levies approved prior to Sept. 1, 2005 (but only if the levy is still in place) and on TPP values that existed as of Aug. 31, 2005. The kilowatt hour and natural gas distribution taxes were created to replace revenues lost due to tax changes made by Senate Bill 3 & Senate Bill 287 (123rd General Assembly) regarding utility deregulation. Since 2002, townships have received “replacement” revenues in the form of payments. Initially, the amount distributed to each township was based solely on the amount of money that each jurisdiction lost due to public utility personal property tax changes made by the two bills. Included in HB 153 (129<sup>th</sup> GA) was language that provided for a reduction in tangible personal property (TPP) tax and public utility tangible property (dereg) tax reimbursements to schools and local governments. This reduction was originally proposed as a phase-out but the General Assembly recognized the devastating impact the revenue reduction would have on schools and local governments and only provided for a limited reduction period after which time the payments continue for the life of the levy.

Townships are heavily reliant on the property tax, thus this phase-out will more drastically impact townships than other forms of local government. According to a spreadsheet released by the Ohio Department of Taxation, in 2014 townships were reimbursed \$24.56 million for TPP tax lost and nearly \$3 million in dereg revenue lost. These numbers only account for township levies, not special district levies of which townships are a part such as fire, EMS or parks.

House Bill 64 proposes to accelerate the phase-out of these reimbursements to schools and local governments. The OTA strongly urges the General Assembly to continue the reimbursement to townships at the current level.

### **REQUEST FOR ADDITIONAL AMENDMENTS**

In continuing to work in the spirit of the last two General Assemblies, we have put together items for possible inclusion in HB 64 that would provide flexibility to townships as it relates to tax policy. On behalf of the 1,308 townships in Ohio, we respectfully request consideration of the following amendments not currently addressed in HB 64.

### **Additional Revenue for Townships**

Included in SB 243 of the 130<sup>th</sup> General Assembly, townships received a one-time cash infusion of \$10 million to be transferred from the Local Government Innovation Fund. The \$10 million is to be divided two ways. The first \$5 million is to be equally divided among Ohio’s 1,308 townships. The remaining \$5

million is to be divided by the number of miles of road in each township. Again, this one-time cash infusion is only for the remaining six months of FY 2015. While we are grateful for the \$10 million infusion to our members, we believe a compelling case for additional funding can be made. I don't need to remind this Committee that townships do not levy income or sales taxes and do not receive casino revenue.

### **Use of Tax Levy Revenue for Attorney Fees**

The Ohio Attorney General opined that a township may not use revenues generated from a fire levy or a police levy for legal expenses incurred by the board to address collective bargaining issues involving township fire and police employees (2014-028). The result of this opinion is that townships will be forced to pay those costs attributed to fire, EMS and police services from their general funds, which are severely depleted due to the loss of revenue streams.

It is common practice in many townships to expect and require the police and fire departments to operate completely from the revenues generated from their specific levies designated for those purposes with no assistance from the township's general fund. This has become even more prevalent in recent years with the reduction of LGF funds to local government. This practice has developed largely because the funds provided by general operating are limited and are needed to fund general township operations such as building operations, paying staff and bills and similar expenses which are not payable with "special levies." It is also common practice for townships to retain legal counsel for a variety of purposes in addition to collective bargaining. These issues can include personnel matters such as grievances, disciplinary matters, review of language for ballot language, bond counsel for public construction projects and other issues.

While the ORC requires the prosecuting attorney of a county to act as the "legal counsel" for townships, most lack staffing, money and time to adequately address these types of issues. A legislative fix is needed to allow townships to expend funds generated by "special purpose levies" for the payment of legal counsel for personnel matters. Unions are ably represented by labor law experts in these matters; management needs the same sort of assistance on its side of the table.

An additional consideration in addressing this issue is that since all levies currently in effect do not contain any accommodation that will be proposed or made there needs to be consideration given to making these accommodations applicable to existing levies. It should be further recognized when addressing this concern that some townships may have all continuing levies so this accommodation will have to be permanent as there is not any way ensure that a phased approach will extend the accommodations to all areas.

*Example:*

*In 2014, Jackson Township in Stark County had to use \$16,758 of general fund money, instead of fire, police and EMS levy funds, to pay for attorney fees associated with collective bargaining, arbitration, and labor issues. Over a six year period, Jackson Township has spent over \$73,000 of general fund revenue on these expenses.*

The OTA recommends amending R.C. §5705.19(I) & (J) to specifically permit levy proceeds from fire, EMS and police levies to be used for “all related costs,” which would include collective bargaining expenses.

***Continuous Cemetery Levy***

Townships maintain over 2400 cemeteries in Ohio. A township is required to have a cemetery laid out in lots, number the lots, and the township fiscal officer must keep careful records of said actions (R.C. §517.06). The board of trustees is required to make and enforce all needful rules and regulations for the division of the cemetery into lots and the allotment of lots to families or individuals, and for the care, supervision and improvements of said lots. Revised Code §517.06 further requires that the grass and weeds in the cemetery be cut at least twice a year. In 1964 the Attorney General opined that a township may contract with an independent contractor when reasonably necessary to maintain and care for a cemetery (OAG 64-991).

The Ohio Revised Code mandates that a township provide for the protection and preservation of cemeteries under its jurisdiction (R.C. §517.11). Moreover, townships are also required to maintain abandoned cemeteries in their jurisdictions (R.C. §517.27). While the Code states that townships may re-erect any fallen tombstones, a 1975 Attorney General Opinion (OAG 75-083) states that “boards of township trustees *have a duty* to repair and re-erect monuments and tombstones in public cemeteries within their jurisdiction when the repair is necessary to keep the cemetery in good repair.” The opinion further states that “a board of township trustees has a duty to repair and re-erect monuments in a cemetery that has been vandalized.”

The township may choose to enclose township cemeteries with a fence or hedge but should they do so, the township is required to keep the fence or hedge in good repair (R.C. §517.11). When a board of county commissioners has enclosed with a fence all abandoned public cemeteries in the county from which remains have not been removed, the board of township trustees shall keep the fence in good repair and remove the undergrowth and weeds at least once a year (R.C. §517.32).

Being that the care and maintenance of the cemeteries is mandated by law, a township must find the funds to care for the cemeteries. Townships have seen revenue sources reduced or eliminated over the last five

years. With reduction in revenue that is primarily used for general township purposes, townships have been forced to seek additional revenue. Pursuant to R.C. §5705.19(T), a township may place before the voters a levy for which funds would be used for maintaining and operating cemeteries. A cemetery levy may only be levied for five years at a time and then must be placed before the voters again.

There are certain types of levies that may be continuous, specifically safety service levies. Due to cemetery maintenance being a mandated responsibility, the OTA recommends giving townships the option to place a cemetery levy on the ballot as a continuous levy.

### ***Tax Increment Financing Clean-up***

In HB 66, passed in the 126th General Assembly, changes were made to the TIF law to require counties to sign off on municipal TIFs, as county service levies will be directly impacted by the granting of TIF districts. Townships are being impacted just like counties and deserve the same treatment.

Norwich Township in Franklin County has lost \$868,000 over the last five years due to tax increment financing districts created by the City of Hilliard that includes territory that still remains in the township and to which Norwich Township provides fire and emergency medical services. The township has also lost over \$260,000 in tax abatements granted by the City and Franklin County. Madison Township in Franklin County has lost over \$1.3 million in fire levy revenue due to tax increment financing districts created by the City of Groveport and tax abatements granted the City and Franklin County. Madison Township has an assisted living facility that is being built on a parcel that just was TIF'd. Based on previous experience with this type of facility, the township can expect an average of at least 70 runs per year, yet will be receiving no increase in revenue to help offset the new service runs.

Mr. Chairman, this begs the question of fairness regarding tax incentive programs as a whole. As pointed out by Norwich and Madison Townships in Franklin County, they each lost revenue from tax abatements, as well as TIFs. When said tax incentives are at the expense of another jurisdiction that does not even have a seat at the table, the fairness of those incentives is called into question, especially when the jurisdiction that is harmed is the one providing the safety services or is dependent upon the property tax that is being abated. Municipalities can get revenue through their imposed income tax and counties can get revenue through their imposed sales tax. Townships live and die by the property tax.

The OTA strongly encourages the General Assembly to extend that same courtesy to townships when land lies within the township and the municipality, such is the case when land is annexed under R.C. § 709.023.

*Additional Budget Requests*

Below is a list of additional governance flexibility amendments that will be sought through the Finance Committee consideration of House Bill 64.

- Provide for a hearing in R.C. §505.86, which permits a township to remove unsafe buildings
- Permit townships to use a private auction for real and personal property purchases (counties have the authority for real property)
- Explicitly permit a township to pay township bills online (counties have the authority)
- Provide townships the authority to accept credit cards (state and counties have the authority)
- Ability to resell cemetery lots purchased prior to 1986

Mr. Chairman and members of the Committee, thank you for the opportunity to testify and for your consideration of our requests. I would be happy to answer any questions that you may have.