OHIO LEGISLATIVE SERVICE COMMISSION

www.lsc.ohio.gov

Office of Research and Drafting

Legislative Budget Office

H.B. 122

136th General Assembly

# Fiscal Note & Local Impact Statement

Click here for H.B. 122's Bill Analysis

**Version:** As Introduced

**Primary Sponsors:** Reps. Lampton and T. Hall

**Local Impact Statement Procedure Required:** No

Ruhaiza Ridzwan, Senior Economist

## Highlights

- Authorizing a tax credit for organ donation leave benefits against the state personal income tax (PIT) would reduce PIT revenue by an estimated $558,000 to $729,000 annually. These costs may increase in future years.
- The state GRF would bear 96.6% of the total revenue loss while the remaining amount would be borne by the Local Government Fund (LGF, Fund 7069) and the Public Library Fund (PLF, Fund 7065) each by 1.7%.

## Detailed Analysis

The bill creates a nonrefundable credit against the personal income tax (PIT) for qualifying employers that pay donation leave benefits to employees while those employees are on leave for a period that is medically necessary to recover from donating organs. The credit applies to taxable years ending on or after the bill's effective date, potentially in tax year (TY) 2026, thus the estimated revenue loss would begin in FY 2027.

Based on the latest year of published tax data, TY 2022, 260 taxpayers claimed the PIT deduction for actual expenses in connection with organ donation. Although the PIT deduction in continuing law is not modified by the bill, the number claiming this deduction serves as the basis for estimating the incidence of employers claiming the newly authorized nonrefundable credit. The bill's credit to employers for compensation paid to employees while on medically necessary leave after donating organs, limited to no more than $300 per day for up to 30 days, would cost an estimated $558,000 to $729,000 per year in foregone state revenue.

## Number of organ donors claiming the current deduction

The living organ donor deduction was enacted in H.B. 119 of the 127th General Assembly, that biennium's main operating budget act.[1] The new deduction was effective for TY 2007 and thereafter. Under the bill as well as in current law, a deduction may be claimed for donation of all or part of the donor's liver, pancreas, kidney, intestine, lung, or bone marrow. Organ donor deduction data are posted on the Department of Taxation website starting with TY 2011, but initially are combined with deductions for deposits to individual development accounts.[2] Data on organ donor expenses are published separately starting with TY 2015 and are shown in the following table. Organ donations for which deductions were claimed and associated expenses have generally trended upward in the years shown in the table.

| Organ Donor Expenses Deducted | | | |
|---|---|---|---|
| Tax Year | Value | Number of Tax Returns | Average Value |
| 2015 | $327,849 | 152 | $2,157 |
| 2016 | $125,704 | 162 | $776 |
| 2017 | $320,557 | 180 | $1,781 |
| 2018 | $471,375 | 214 | $2,203 |
| 2019 | $698,615 | 267 | $2,617 |
| 2020 | $637,157 | 286 | $2,228 |
| 2021 | $748,559 | 246 | $3,043 |
| 2022 | $808,792 | 260 | $3,111 |

## Estimated tax revenue loss from employer tax credit

The bill would let an employer, including a pass-through entity (PTE), claim a credit against the state income tax for compensation paid to an employee who (1) donates an organ and (2) receives that compensation while on medically necessary leave to recover from making the donation. For the employer to be allowed to claim the credit, the amount of this compensation must equal the amount that the employee would have received if that employee had worked for

[1] Historically, 41% of donated organs in Ohio during 1988 through 2023 came from living donors and 59% from deceased donors, in data on the Organ Procurement & Transplantation Network website, within the U.S. Department of Health & Human Services: optn.transplant.hrsa.gov/data/view-data-reports/build-advanced.

[2] Individual development accounts can be used by low to moderate-income individuals and families as part of a savings and match program for home ownership and for benefits to refugees.

the employer during the recovery period and is paid as part of a policy of the employer that does not deduct time from the employee's other paid leave time. For a PTE, taxpayers who hold an equity interest in a qualifying employer that paid the donation leave benefits would be allowed to claim their distributive or proportionate shares of the credit. Any excess of the amount of the credit over a taxpayer's tax liability before the credit could not be refunded (i.e., the credit would be nonrefundable), but unused credit amounts could be carried forward to subsequent tax years by up to three years.

The bill limits the amount of the credit to the lesser of the amount paid or $300 per day, not to exceed 30 days, implying a maximum per donor who is an employee of $9,000. In addition, each employer is limited to a maximum amount of credits that could be claimed each year of $54,000.

Not all employers could make use of the credit. The income of businesses organized as C corporations, for example, is not subject to Ohio's income tax, so those employers could not use the credit. Other business entities organized as S corporations are PTEs, the owners of which could claim their shares of the credit. Employers that are government or nonprofit entities would owe no income tax, so they could not use the new credit. Sole proprietors and partnerships could use the credit. The bill may preclude self-employed persons with no employees from claiming the credit.[3]

In 2024, U.S. Bureau of Labor Statistics data show 59.7% of Ohio's adult population as employed. Very few organ donors are not adults.[4] About an estimated 40% of employees work for employers subject to Ohio's income tax. Data on numbers of employees by legal form of organization are available from County Business Patterns, a U.S. Census Bureau product. For 2022, County Business Patterns show that about 2.1 million employees worked for S corporations, proprietorships, and partnerships statewide, 37.4% of total Ohio employment. County Business Patterns excludes several industries as well as most government entities and the self-employed. The 40% estimate includes an allowance for employees of the excluded industries (but not including governments or the self-employed), and it is only an approximation.

Based on these figures, an estimated 24% (59.7% multiplied by 40%) of Ohio adults in 2024 worked for employers subject to the state personal income tax. Based on the 2022 information in the table above of "**Organ Donor Expenses Deducted**," of the 260 returns claiming the credit in 2022, an estimated 62 (260 multiplied by 24%) were claims by employees who worked either for employers subject to the state income tax or for PTEs.

This estimate may understate the likely share of organ donors who work for employers subject to Ohio's income tax. Only about 2% of Ohio living donors since 1988 were age 65 or

---

[3] The bill limits qualifying employers to those registered and authorized to use the E-Verify federal employment verification program. E-Verify provides a way for employers to confirm the employment eligibility of employees. A self-employed person with no employees would have no reason to confirm his or her own employment eligibility, though such a business person might be eligible to register and become authorized to use E-Verify, so perhaps satisfying this criterion.

[4] The Organ Procurement & Transplantation Network website Organ Procurement & Transplantation Network data show that from 1988 through 2025, only five of more than 8,200 living donors in Ohio were under age 18.

older, and 76% were between ages 18 and 49, based on data on the Organ Procurement & Transplantation Network website. To account for this, the share of Ohio's adult population that was employed in 2024, in the calculations above, is adjusted upward to 78%, reflecting the higher share of the population who are employed in age groups more likely to donate organs. The estimated share of employees at employers subject to the state income tax as a share of the working age population rises to 31% (78% multiplied by 40%). The implied number of donors in 2024 who worked for employers subject to income tax rises to 81.

At the maximum of $9,000 per employee, this range from 62 to 81 employees implies a potential cost range from $558,000 to $729,000. Some employers may owe too little tax before the credit to be able to use the full amount of the credit, even when account is taken of the three-year carryforward that the bill provides. The extent to which an inability of taxpayers to use all of these credits is uncertain. Costs may rise over time, in line with the rising trend in living organ donors evident in the table.

Clearly the number of employers eligible to claim the credit in any given year could vary substantially, either higher or lower, from the number implied by the share of employees who work for employers either subject to the state income tax or that are PTEs. The numbers above are estimates of average numbers around which this variability could be expected.

## Revenue sharing

The Local Government Fund (LGF) and the Public Library Fund (PLF) each receive 1.7% of GRF tax revenue in codified law while the GRF retains 96.6%. The bill would reduce revenue to each of the LGF and PLF by about $9,000 to $13,000, and would reduce the amount retained by the GRF by $539,000 to $704,000.[5] These amounts may rise over time.

## Tax Commissioner report

The bill requires the Tax Commissioner to issue a report by September 1 of the year following the bill's effective date, and on each subsequent September 1 to the chairpersons of the standing committees of the House of Representatives and Senate that deal primarily with taxation. The report is to include the number of taxpayers who claimed credits as employers that paid donation leave benefits to employees who donated organs, and the total value of all credits earned and all credits claimed during that taxable year.

The Department of Taxation will incur costs to prepare the required report. Such a report is similar to other reports required of the Department, and additional costs for preparation of the report mandated by the bill will likely be minimal. Any added costs may be paid from GRF appropriation item 110321, Operating Expenses.

FNHB0122IN-136/lb

[5] Components in some cases do not sum to totals because of rounding.