



TESTIMONY BEFORE THE OHIO SENATE FINANCE COMMITTEE

HB49, BIENNIAL STATE OPERATING BUDGET

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June 6, 2017

Chairman Oelslegar, Vice Chair Manning, Ranking Member Skindell, and members of the Senate Finance Committee, my name is Kent Scarrett and I am the Executive Director of the Ohio Municipal League. On behalf of our 734 members, I appreciate the opportunity to speak with you today and offer this testimony as a brief overview of the issues we see with the current budget proposal.

First, the budget promises more money to fight the opiate epidemic and we hope to see that money effectively reach our local departments who are on the front lines of that battle. As this committee knows, the opioid epidemic has impacted every community to one degree or another and not only is a tragic story of lost potential in individuals but is a serious threat to the economic recovery and future stability of the state. Second, the budget does seem to move some more money into projects that we are encouraged by.

You could say that our guiding principal at the Municipal League and for our members could be boiled down to one basic concept of government: “the government closest to the people serves the people best.” This is a quote from Thomas Jefferson, who said this during a debate in 1788 over the 10th Amendment to the U.S. Constitution.

The 10th Amendment reserves rights not given to the federal government to the state and people. Our members have dedicated their work to this federalist principle. Traditionally, the State of Ohio, through its General Assembly, has respected local government and even supported it with local government revenue sharing. Unfortunately, the principle of “home rule” and adherence for local governance has eroded in recent years.

Through this budget, Ohio has an opportunity to help rebuild the traditional partnership between state government and Ohio’s municipal corporations. That partnership is important because municipalities provide foundational services for businesses and the nearly 9 million citizens who call a city or village home. The vast majority of municipal budgets go to public safety and infrastructure.

In 1968, two-thirds of Ohio’s state operating budget was public safety and infrastructure spending. Today, two-thirds of our budget is Medicaid and education. Meanwhile, many of Ohio’s cities and villages are slowly losing the ability to provide the basic services they have traditionally provided, especially in mid-sized rural cities.

In Ohio, our municipalities are blessed with the ability to administer their own tax system, which gives our cities and villages the ability to serve their constituents better. The independence of revenue sources is the most fundamental element to any institution; business, governmental, family, or otherwise. At the end of the day, the municipal income tax incentivizes municipalities to ensure people in its jurisdiction enjoy their maximum earning potential.

The Ohio Municipal League wants to thank the House, Rep. Scherer, their staff and everyone who worked hard on introducing and adopting amendment language that removed the centralized collection of municipal income tax on net profits from HB 49. The removal of centralized collection has alleviated what would have been a devastating burden on municipalities by divorcing them from nearly 15% of their total revenues, practically interfering with vital cash flow, and stripping local tax authorities from their crucial ability to audit, review and enforce compliance, which is a tremendous service to all taxpayers.

Municipalities and the OML demonstrated repeatedly in testimony that if the small universe of businesses required to file in multiple municipalities (about 13%) find multiple filings a burden, a centralized filing portal currently exists: the Ohio Business Gateway. The new language in Sub HB 49 makes filing business net profits through the OBG optional rather than mandatory, as first proposed.

Businesses will be allowed to make the choice best for them. The language mandates revenues be distributed to municipalities at least twice a month, along with the documents pertinent to filing for auditing, reviewing and compliance enforcement purposes.

The language also includes an appropriation for \$24 million earmarked for improving the OBG – particularly upgrading it to allow it to accept attachments and interface with preparer software. This funding is crucial, as these upgrades can make OBG a filing portal businesses actually want to use if they so choose.

However, the language still grants the powers of collection and distribution of revenues filed through OBG to the Tax Commissioner. We see no logic or value in the Department of Taxation be included in this process at all. Currently, OBG acts as a portal for business filings, with payments and returns remitted directly to the administrator of the municipal income tax. Municipalities have worked directly with their banking partners to remit payments through the OBG directly to the bank. Municipalities have also worked directly with their software vendors or internal IT departments to be able to process information coming to the municipality from OBG. Returns are retrieved in machine-readable or human-readable formats and are uploaded into each municipality's software. This is a seamless process, and to have the Department of Taxation involved at all is baffling. We ask that the powers over filing through the OBG remain with the Department of Administrative Services (DAS) where they currently reside and rightfully belong.

Additionally, I want to take a moment and voice Ohio municipalities' opposition to the Tax Commissioner's proposed centralized collection alternative, outlined in his testimony before this committee last week.

Like the original proposal, it wrests administration and collection powers from the municipalities, disregarding multiple court cases that have upheld those powers as Home Rule rights under a municipality's police power. It also disregards the Ohio Business Gateway's inability to accept electronic uploads of tax returns or interface with commercial software, rendering it an ineffective and unattractive option for many tax preparers. And instead of simplifying things on the municipality's end, it burdens them with a 1% administrative fee that for most municipalities, is more than they charge for all tax filings, and it doesn't relieve them at all from administering and monitoring business tax filings. They would still be required to maintain accounts for all business filers, and they would still be

required to monitor all business taxpayer accounts to ensure compliance, regardless of whether they file with ODT or the municipality.

The Tax Commissioner claims this alternative is a “win-win” for businesses and municipalities alike. The League disagrees with this assessment. Allowing a business to “opt-in” (and locking them in for 5 years) to file through OBG for 5 years will only complicate and confuse the municipal income tax filing system.

Consider the following repercussion: businesses within a JEDD or JEDZ are subject to the terms of agreement between the governmental entities, be it a municipality, a township or a county. To collect filings from businesses within the JEDD or JEDZ, the State would place itself in the position of those entities. Businesses within the JEDD or JEDZ would have disparate rules and regulations depending on whether they file with ODT or with the municipality. Furthermore, business operating side-by-side within a municipality would have differing and possibly conflicting compliance regulations if one chooses to file with ODT and one files with the local taxing authority. This difference would certainly lead to inequitable treatment of taxpayers.

There is another crucial issue regarding municipal income tax still in the budget that would cripple the revenues of many municipalities were it to become law. The budget language currently eliminates what is known as the “throwback” provision. The “throwback” provision is part of a complex section of the tax code known as the three-factor formula for determining sales. The “throwback” provision ensures that if tangible personal property is shipped from a warehouse or distribution center in one municipality to another municipality where that business does not have “nexus”, meaning either a brick-and-mortar presence or a W-2 employee soliciting sales, that tax on the sale is “thrown-back” to the municipality where it was originally shipped.

The reason for the “throwback” provision is straightforward but pivotal. Warehouse and distribution centers can create a substantial financial burden for the municipality. Those buildings require increased fire and safety services, and the wear-and-tear delivery trucks cause to the roads necessitate increased infrastructure costs. Warehouse and distribution centers typically don’t employ many workers, so the cost cannot be offset up employer withholdings. The “throwback” tax offsets those costs and allows municipalities to provide those businesses with the services they need.

The language in the budget essentially creates a “nexus to nowhere”, meaning the tax will simply not be applied to the sale of tangible personal property unless there is a W-2 employee in the municipality where the product is shipped, or if the sale and shipment both happen within the same municipality.

This language would result in more lost revenue for municipalities – particularly those smaller municipalities whose main commercial activity is comprised of warehouse and distribution centers.

As you know, businesses across the state often receive various tax abatements and credits from municipalities. They view the special, personalized services Ohio municipalities can offer as an incentive to do business in our state, including the construction of warehouse and distribution centers. Some municipalities have agreed to significant infrastructure changes in order to accommodate an incoming distribution center. However, those incentives are far from free, and they are funded by the revenues generated by the “throwback” provision. Without those revenues, municipalities will not be able to create attractive, accommodating communities for businesses. Eliminating throwback hurts our local communities, it hurts the businesses they serve, and it hurts Ohio in the long run.

Each of you want to make Ohio a business-friendly state. OML and our municipalities want that as well. We stand much to gain from thriving, job-creating businesses calling Ohio home. But businesses don’t merely move into the state; they move into a community and 80% of the time they locate in a city or village. If not properly funded, that community cannot create the business-friendly environment so crucial to our state’s overall economic success. To divorce our municipalities from their revenues or to slash those revenues by large percentages is to cripple the economic engines of our state. We ask for a return to investing in our local communities and a stable, prosperous Ohio.

In addition to these important issues, other items in the budget are impactful to municipalities and I will take just a moment to bring them to your attention.

- Municipalities stand opposed to the amendment that preempts local lead abatement ordinances by making the Department of Health the sole administrator of all lead inspections and abatement measures throughout the state. We believe our local communities are best poised to evaluate the threat lead poses to their local families and are entitled to the right to act

quickly and decisively to combat the lead poisoning affecting far too many children in our state.

- We also oppose a preemption of local water ordinances in an amendment that would prevent certain municipalities from charging what they deem an appropriate fee for water and wastewater services to surrounding communities.
- While OML and our members are grateful for the removal of the capacity-based formula for LGF distribution from the original version of the budget, we ask that the amendment that removes \$24 million from the municipal share of the LGF and distributes it among townships and villages be removed and the \$24 million be restored to the municipalities whose continued growth and recovery depends upon it.
- The League asks that municipal corporations be excluded from the amendment that includes municipal corporations under the Department of Natural Resources' procedures from unit operations for land containing oil and gas reserves, as municipalities have the greatest access to community values as it relates to the management of our public spaces, communities can benefit locally from those revenues and should be empowered to negotiate the best deal on behalf of their own local communities.

Mr. Chairman and members of the Subcommittee, I appreciate your time and attention to our members concerns and I would be happy to answer any questions you may have.