STATEHOUSE REPORT

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HOUSE OVERRIDES VETO OF MCO SALES TAX AMENDMENT FOR COUNTIES AND TRANSIT AUTHORITIES!

In a bipartisan vote of 87-10, the Ohio House completed an override of the Governor's veto of a state budget provision aimed at addressing counties and transit authorities' lost revenue from the elimination of the sales tax on MCO's. Specifically, the provision would require the state to seek federal approval from the Centers for Medicare and Medicaid Services (CMS) to reset the franchise fee on health insuring corporations (HIC) to raise up to an additional $207 million per year.

Statehouse Report coverage includes:

- **Thank you to the Ohio House members who voted in support of overriding the veto**
- **Advocacy**
- **Q & A for supporting override of the Governor's veto**
- **Next step: the Ohio Senate**

to the Ohio House:

The Ohio House convened Thursday to override 11 of Governor Kasich's 47 line-item vetoes in the biennial budget bill (HB 49). The bulk of the vetoes addressed items relating to Medicaid, including the MCO sales tax revenue replacement provision for counties and transit authorities.

During session, Rep Bill Seitz (R-Cincinnati) said that the Governor's plan for the MCO tax replacement would force counties and transit authorities to lose revenue. He said the legislature's plan is to ask the federal government for permission to adjust rates for six years in order to help local governments transition away from the revenue.

"Why six years? They enjoyed the revenue for six. They should enjoy it for another six years," he said. He also added that the legislature's plan is partial replacement and is subject to the federal Centers for Medicare and Medicaid Services (CMS) approval.

Minority Leader Fred Strahorn (D-Dayton) urged support for overriding that veto, saying he feels fairly confident that there is little risk that, as the Administration has warned, the request would jeopardize the current replacement plan for the state, which includes a waiver that the Administration obtained late last year.

You can see how your state rep voted here.

Please take the time to thank House members who stood in support. Conveying appreciation is a vital component in a successful lobbying campaign.

House Contact List

We now move to the Ohio Senate. Successful reinstatement of the MCO amendment requires the Senate to come back to the Statehouse and agree with the House's override. **We must continue to talk to members of the Senate and let them know how important this issue is. Please urge senators to vote "Yes!"**

Senate Contact List

In addition, engage stakeholders in your county to help share the importance of the revenue replacement. This includes your local chambers of commerce, business organizations, soil and water, Extension, and other partners in delivering services as well as the individuals who receive those services. In addition, encourage your other elected officials in the courthouse to convey the impact on your counties' budget.

Also, tell your county's story with the help of the local media. Send a press release or letter to the editor or simply call your local media to tell your county's story.

KEY TALKING POINTS

• **Now is not the time to leave counties behind.** In the absence of a revenue replacement mechanism, counties would have to reduce or eliminate funding for programs that invest in economic growth and exacerbate the growing pressure on important systems like criminal justice, public safety, and child protection. The demand on these services is only growing in the wake of the opiate epidemic.

• Explain what budget cuts you anticipate having to impose if the lost revenue is not replaced. Also, highlight any impacts on your economic development efforts.

• Pursuing an increase in the HIC franchise fee would not jeopardize Ohio's current waiver. In the event that the request to reset the fee is not approved, our existing waiver would remain in place. The original waiver met the criteria necessary for automatic approval and would continue to meet those criteria.

• The Seitz/Dolan amendment directs the state to take a **stair-step approach** in talking with CMS for approval to reset the proposed HIC franchise fees. It instructs the Medicaid Director to first ask CMS if Ohio's franchise fee can be increased, and if the Director receives a favorable response, then the Director shall request formal approval.

• Remind them that the SFY 18/19 Executive Budget fully replaces lost revenue to the state through a new proposed franchise fee on MCO's, but only provides counties and transit authorities a one-time allocation to be spread out over 2 payments. Counties seek parity with the state in terms of a revenue stream replacement. Do not leave counties behind.

• Indicate that you SUPPORT the Dolan/Seitz amendment to provide fiscal stability for the state's county partners.

• Urge support for overriding the Governor's veto.

Finally, CCAO understands there have been discussions regarding the additional revenue that this provision would generate and who would be responsible for reimbursing the Medicaid managed care organizations for their new rate. Under federal law, Medicaid managed care plans must be paid a rate sufficient to cover medical expenses plus administrative costs, including taxes. Any payment to Medicaid managed care plans is part federal dollars and part non-federal dollars. We now know that the legislature and the Administration may have reached an understanding that the non-federal portion of the additional dollars needed to pay the managed care plans will come from the money designated for counties and transit authorities. If this understanding comes to fruition, locals will receive 68 - 69% of what they received in the past, rather than complete replacement.

Q & A – Reasons for supporting override of Governor's veto:

The federal government has determined that the sales tax on Medicaid managed care services which provided revenue to the state, counties and transit authorities can no longer be collected. Ohio has instituted a policy change to address this determination, but the plan that was included in the Executive Budget fixes the state's revenue stream while leaving counties and transit authorities behind. The General Assembly proposed a change that created parity for these entities but that plan was vetoed by the Governor before he signed HB 49 into law late Friday night. Veto of the proposal to reset the health insuring corporation franchise fee (Item #33) to address the local losses removes an important plan for local revenue replacement that was incorporated during the conference committee. The Administration has not favored this plan; however, we hope the information below will lay to rest the concerns they have raised.

- **What's wrong with how the veto leaves the state budget?** The budget no longer addresses counties and transit authorities' lost revenue for local services after they have received a one-time, fixed allocation.

State tax policy must change to comply with federal requirements. By switching from the prior method of a sales tax to a franchise fee on health-insuring corporations, the state will receive slightly more revenue on an annual basis than it received in prior years. On the other hand, counties and transit systems simply receive a one-time fixed allocation over two payments to help them deal with the lost sales tax revenue.
While some transitional aid is provided, this is not an appropriate solution for the loss of a revenue stream as important as sales tax. **Counties and transit authorities should not be left behind as the state moves forward with a fee that replaces all of its lost revenue.**

- **Is the General Assembly's proposed solution in HB 49 that was vetoed an increase in local taxes on Medicaid plans? No.** This is not a tax increase; it is a change in how the funds are collected and actually will result in counties and transit authorities receiving less than they did in 2016. It is not new growth.

  On the other hand, the state is receiving slightly more revenue. **By leaving counties and transit authorities out of the proposed franchise fee, the state nets more revenue than they received under the prior sales tax model.** Resetting the new franchise fee to cover the state, counties and transits, pending federal approval, is aimed at maintaining some revenue the entities have had in the past. Generating $207 million for locals when they actually received $209 million in calendar year 2016 is not new growth. And, as explained below, the amount actually going to counties and transits may be more like 68-69% what they used to get.

  The Administration's proposal for addressing the state's loss of revenue with the new franchise fee does levy a minimal fee on non-Medicaid managed care plans for the first time in order to meet federal compliance. This concept was not opposed by health plans, business groups or others during state budget hearings. Piggybacking on this concept would result in approximately $1 million statewide for the locals on top of the $4 million for the state that is currently authorized by the state budget. Again, this overall proposal is a replacement for the sales tax revenue that counties and transits had received in the past, and not even full replacement.

- **Does this proposal hold counties and transit authorities harmless? No**. The fee would raise a couple million dollars less for locals as described above. In addition, locals may end up getting 68-69% of what they received in the past.

  The proposal was simple – provide counties and transit authorities with the same level of funding they received in the past – approximately $207 million. CCAO recently learned that there have been discussions regarding the additional revenue that this would generate and who would be responsible for reimbursing the Medicaid managed care organizations for their new rate. Under federal law, Medicaid managed care plans must be paid a rate sufficient to cover medical expenses plus administrative costs, including taxes. Any payment to Medicaid managed care plans is part federal dollars and part non-federal dollars. We now know that the legislature and the Administration may have reached an understanding that the non-federal portion of the additional dollars needed to pay the managed care plans will come from the money designated for counties and transit authorities. If this understanding comes to fruition, locals will receive 68 - 69% of what they received in the past, rather than complete replacement for 6 years starting in

2018 mid-year.

- **Does this jeopardize Ohio's new waiver for the franchise fee that has already been approved? No.** The issue is complex, and we respect that. That's why **the proposal takes a stair-step approach in pursuing this change with the federal Centers for Medicare & Medicaid Services (CMS)**.

    - Ohio would engage CMS to explore new fee structures, but it can start as an informal discussion with the agency first. The amendment included a stair-step approach, requiring the state to first ask CMS if Ohio's franchise fee can be increased. If yes, the amendment then directs the state to seek the increase. If those higher rates are not approved, the state's existing waiver would remain in place.

    - Communication with CMS is not taboo. The new franchise fee for the state meets the requirement for the waiver that was approved last year. Informal conversations with CMS, and even a formal waiver request, does not jeopardize the existing waiver. The higher tax rate meets many of the elements required for CMS to approve it, giving it a good chance for approval. In the event it would not be approved, the state's current waiver at the lower fee rate would remain in effect. The County Commissioners Association of Ohio worked with Manatt, Phelps & Phillips, LLP, a firm with expertise in these matters, to identify the stair-step approach that is consistent with CMS practice.

    - The existing waiver would not be replaced unless and until the higher franchise fee rates were approved by CMS. The existing franchise fees that generate revenue for the state met the requirements for an automatic waiver, and that waiver would not be revoked upon the state requesting consideration of an alternative fee rate.

- **What's the impact on counties without revenue replacement? Reduction and/or elimination of important services that help Ohio's communities thrive.**

    Counties testified throughout the budget process about the difficult decisions that face communities if this annual revenue to counties and transit authorities is lost and the budget realities they have been facing.

    For example, Shelby County's 2017 general fund budget is currently less than the budget passed in 2002. Wayne County testified that from 2007-2015 their total revenue growth was a net total of one percent. Cuyahoga County shared how they are projecting a record 775 overdose deaths in 2017 and that this crisis has had a substantial impact on almost every county system; they also have more kids in custody than they have had since 2011.

    Now is not the time to leave counties behind. In the absence of a revenue replacement mechanism, counties would have to reduce or eliminate funding for programs that invest in economic growth and exacerbate the growing pressure on important systems like criminal justice, public safety, and child protection. The demand on these services is only growing in the wake of the opiate epidemic.

Governor vetoes 47 separate items in state budget, some impact state/county resources going forward

On June 30 prior to signing the SFY 2018 – 2019 state biennial budget, Governor John Kasich vetoed 47 separate items (link to **vetoes**).

Prior to the Governor taking action on the budget CCAO submitted a letter to the Governor asking for the Medicaid MCO sales tax replacement funding amendment to be retained.

While the Governor did veto the Medicaid MCO sales tax amendment and the House separately voted to override the Governor's veto of the Medicaid MCO amendment (See separate story in this newsletter), 36 other line item vetoes still stand at least at this point in time.

The Ohio House has until the end of the current General Assembly to take action to override any of the other vetoes made by the Governor. The Ohio Senate cannot override any of the Governor's vetoes unless the Ohio House as the originating chamber on the budget acts first. So, at the present time the Ohio Senate can eventually take up one or more of the 11 veto override items which the Ohio House acted upon on July 6th.

The following list of vetoed items includes items of interest to counties. Only item number 33 involving the HIC franchise fee or Medicaid MCO amendment was subject to a veto override effort by the Ohio House. The other items listed below have not yet been subject to a veto override attempt by the Ohio House, but the Ohio House, and upon House action the Ohio Senate retain the authority to act to override a veto until the end of the 132nd General Assembly (December 31, 2018).

- **Item number 1 – Funding for Voting Machine Upgrades** – This provision would create a $1,000,000 capital appropriation to reimburse counties for the purchase of new voting machines and associated services and equipment made on or after January 1, 2014. The administration's concern is that using state capital dollars to reimburse for previously purchased voting equipment would be problematic.

- **Item number 20 – Adult Protective Services** – This provision would make law enforcement and county prosecutors eligible to receive reimbursement for activities related to adult protective services.

- **Item number 28 – Medicaid Eligibility Requirements for Expansion Group** – This provision would require the director of the Department of Medicaid to seek a federal waiver to allow the department to prohibit Ohioans aged 19 through 64 with an income at or below 138 percent of the federal poverty level who is not already enrolled in Medicaid, from enrolling in the program after July 1, 2018. This item is the so-called "Medicaid expansion freeze" which would reverse the expansion of Medicaid to additional populations of eligible applicants begun by this administration in 2014.

- **Item number 33 Veto is Overridden BY THE HOUSE – Health Insuring Corporation (HIC) Franchise Fee** – This is the Medicaid MCO amendment. Please see related story in this newsletter and the need for Senate action to also vote to override the veto.

- **Item number 38 – Property Tax Valuation of Oil and Gas Reserves** – This provision would specify the only method that county auditors can use for determining the value of sales and leases when assessing a value for tax purposes of sub-surface minerals prior to their production.

- **Item number 41 – Sales Tax Remittance by Motor Vehicle Dealers** – This provision would allow Ohio motor vehicle dealers to remit sales and use taxes on vehicle sales directly to the state on a monthly basis, rather than to a clerk of court when a vehicle is titled. The administration claims that this provision would cost the state $18.8 million in revenue in SFY 2019.

- **Item number 42 – Sales Tax on Electronic Services** – This provision would create an exemption from the state sales tax by specifying that sales of automatic data processing, computer services, electronic information services and electronic publishing are not considered the true object of a sales transaction and therefore not subject to the sales tax when they are provided primarily for the delivery, receipt or use of another non-taxable service. The administration claims that this exemption would cost the state $115 million in SFY 2018 and $121 million in 2019. The exemption is retroactive to 2007, thus the state estimates that this exemption would cost the state an additional $246.5 million for refunds on exempt sales taxes. It is unclear from the governor's veto message whether the state is including county sales tax dollars within their estimates of revenue losses.

- **Item number 43 – Sales Tax Exemption for Prescription Optical Aids** – This provision would exempt prescription optical aids and their components up to $650 in value from the sales and use tax. This would result in the loss of state and local sales tax revenue – the veto message does not indicate how much – and the administration contends that the exemption would place Ohio out of compliance with the stream lined sales tax agreement and thus jeopardize $43.8 million in sales tax revenue that Ohio received under that agreement in 2013.

- **Item number 47 – Local Workforce Development Board Meetings by Teleconference** – This provision permits local workforce boards to meet remotely by teleconference.

For additional information on the issues discussed in this article, please contact Brad Cole of the CCAO staff at bcole@ccao.org

Senate plans for veto overrides in flux

Senator Obhof

Senate President Larry Obhof (R-Medina) said the Senate Republican Caucus has yet to meet to decide whether to attempt to override any of the Governor's 47 vetoes of language in the state budget.
"We have to decide that still as a caucus," Senator Obhof said. "First, whether we want to override anything and, among the things the House has overridden, which of those we would like to take up."
House lawmakers on Thursday voted to override 11 gubernatorial vetoes. As the chamber of origin for the budget bill, the House is required to act first and the Senate therefore cannot address items not already overridden by the House.

As a result, the Medicaid freeze veto - which the House didn't vote on but could override later this General Assembly - is out of the Senate's hands for now, Sen. Obhof said.

As for other specific overrides from the House, Sen. Obhof said his members will review them one by one and that each will get "a full and fair" consideration in the caucus.

"We will discuss as a caucus the next steps moving forward and we'll dig into the issues the House worked on today [July 6] and take a look at those and see where our members are," Sen. Obhof said.

The Senate has if-needed sessions slated later this month, although Senator Obhof said the chamber's schedule isn't finalized. The chamber has canceled an if-needed session for July 12, but Senator Obhof said that he anticipates the chamber will meet "at least once or twice during the summer" to either take up override votes or conduct normal business.

TCAP grants Pre-Announcement

Preliminary information on the T-CAP grant application process - DRC has prepared a pre-announcement document describing the program and giving background information on the grant application time line and content and asked that CCAO distribute it to our members. The state budget bill requires the board of commissioners and the court of common pleas administrative judge to jointly submit a T-CAP grant application. DRC indicates that it intends to release a formal solicitation regarding the Targeted Community Alternatives to Prison (T-CAP) grant on or about July 17, 2017, and has providing this information now to give the commissioners and common pleas court the opportunity to begin preparations prior to the opening of the formal solicitation period. The announcement provides estimated dates for the various events in the submission process, selection process, and grant period. While these dates and guidelines are subject to change, the ten largest counties and those counties interested in voluntarily participating in the program should begin to prepare their application based upon this information being provided by DRC. The document also sets out the maximum amount each county will be able to receive over the 2-year grant award period.

Bills Introduced

SB 171

PROTECTION ORDERS (HOTTINGER, J.)

To increase the penalty that applies to the offense of violating a protection order under certain circumstances and to require electronic monitoring of those convicted of violating certain protection orders to be carried out by probation agencies.

HB 302

PREGNANT MINORS (BOGGS, K., ANTONIO, N.)

To authorize a pregnant minor to consent to receive health care to maintain or improve her life or the life of the unborn child she is carrying.

HB 303

SERVICE ANIMALS (LIPPS, S., KELLY, B.)

To prohibit places of public accommodation from preventing the use of a service animal.