



# Ohio Legislative Service Commission

## Bill Analysis

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### Sub. H.B. 182

131st General Assembly

(As Reported by H. Economic and Workforce Development)

**Reps.** Schuring, Baker

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## BILL SUMMARY

- Reorganizes the law governing joint economic development districts (JEDDs) created under the state-wide procedure into one Revised Code section.
- Specifies that JEDDs may be created for "redevelopment" purposes.
- Allows "mixed-use facilities" (i.e., buildings that include residential and commercial or industrial space) to be included in the territory of a JEDD.
- Allows the contracting parties to designate "excluded parcels" within the boundaries of a JEDD that are not part of the JEDD nor subject to the JEDD income tax.
- Allows the imposition of a JEDD income tax on the income of individuals residing within the boundaries of the JEDD.
- Clarifies that JEDD income tax revenue may be used for the provision of utility services.
- Requires that JEDD contracts expressly include an economic development plan, procedures for appointing the board of directors of the JEDD, and a restatement of the law prohibiting municipal annexation of unincorporated JEDD territory.
- Specifies that only the record owner of real property or a person with authority to make legally binding decisions on behalf of a business may sign a petition approving a JEDD contract or amendment.
- Requires the contracting parties to send written notice to property and business owners that did not sign the petitions supporting an amendment to add territory to a JEDD.

- Authorizes the contracting parties to amend an existing JEDD contract for the purpose of removing territory from the JEDD or designating excluded parcels within the JEDD.
- Eliminates the requirement that the contracting parties send notice to each affected county before and after adopting a JEDD contract.
- Establishes a procedure permitting the owner of a business operating in the unincorporated territory of a JEDD to apply for exemption from the JEDD income tax on behalf of the business and its employees.
- Authorizes affected school districts to waive the exclusion of retail facilities from the tax benefits available in enterprise zones.

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## **CONTENT AND OPERATION**

The bill reorganizes the law governing joint economic development districts (JEDDs) created under the law that currently applies throughout the state. It also makes numerous changes respecting the creation, amendment, and operation of such JEDDs. Finally, the bill authorizes affected school districts to waive the requirement, under continuing law, that retail facilities be excluded from the tax benefits available in enterprise zones.

### **JEDDs – background**

JEDDs are territorial districts created by agreement of the legislative authorities of municipal corporations, townships, and, under certain circumstances, counties. The purpose of a JEDD is to promote economic development, create and preserve jobs, and improve the economic welfare of the people in the state and in the area of the contracting political subdivisions. Generally, these purposes are accomplished by imposing an income tax within the district and sharing the revenue and other resources among the subdivisions. The revenue and resources may be used to enhance infrastructure in the area surrounding the district, provide new and additional services and facilities to the district, accomplish other objectives that may be specified in the JEDD contract, and supplement the revenue of each subdivision. JEDDs are governed by a board of directors composed of members representing each of the contracting parties. If businesses operate in the JEDD, two additional members represent the businesses and the people working in the JEDD.

There are three statutory procedures for creating a JEDD. The first two "restricted" procedures are available only to municipal corporations and townships that are located in a charter county, to JEDDs composed solely of municipal territory that



includes an airport, to municipal corporations that have previously created a JEDD composed solely of municipal territory that includes an airport, or to municipal corporations and townships that are part of or contiguous to a transportation improvement district and that created a JEDD before November 15, 1995.<sup>1</sup> The third procedure is available to municipal corporations, townships, and counties throughout the state. The bill makes changes only to JEDDs created under the state-wide procedure.

### **Reorganization of JEDD law**

The bill consolidates the law governing JEDDs created under the state-wide procedure into section 715.72 of the Revised Code. Currently, these provisions are codified as sections 715.72 through 715.81. A significant portion of the bill's underlined text in section 715.72 is identical to current law. This analysis addresses only substantive changes in the language.

### **Purposes**

Under continuing law, the purpose of a JEDD is to "facilitate economic development[,] create or preserve jobs and employment opportunities[,] and to improve the economic welfare of the people in this state and in the area of the contracting parties." The bill adds "redevelopment" as a lawful JEDD purpose.<sup>2</sup>

### **Territory requirements**

Current law prohibits political subdivisions from designating a JEDD that includes territory where electors reside. The bill retains a general restriction against JEDDs in residential areas, but authorizes the inclusion of mixed-use facilities even if electors live there when the JEDD is designated. ("Elector" is not defined for this purpose. Under the elections law, an elector is a person who is legally qualified to vote.<sup>3</sup>) A "mixed-use facility" is defined as a building used concurrently for both residential and commercial or industrial purposes. If the building lacks a business occupant at the time the JEDD is designated, it is still considered a mixed-use facility so long as the building is zoned for commercial or industrial use and the owner or lessee of the building is either in the process of preparing the building for such use or seeking a commercial or industrial occupant.<sup>4</sup>

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<sup>1</sup> R.C. 715.70(A), not in the bill.

<sup>2</sup> R.C. 715.72(C).

<sup>3</sup> See R.C. 3501.01(N) and 3503.01.

<sup>4</sup> R.C. 715.72(E)(1)(b).



Continuing law requires that the territory of a JEDD be located within the territory of one or more of the contracting parties. All territory of the contracting parties may be included except for parcels of land owned by or leased to a township or municipal corporation that is not a contracting party and that has not given its consent to have the parcel included in the JEDD.<sup>5</sup>

### **Excluded parcels**

The bill allows contracting parties to designate one or more excluded parcels that, despite being located within the boundaries designated in the JEDD, are not part of the JEDD. Net profits and income generated or earned within an excluded parcel are not subject to any income tax levied by the JEDD contract. The notice and petition requirements that apply to owners of property and businesses located in proposed JEDD territory do not apply with respect to excluded parcels.

Excluded parcels may be identified within an original JEDD contract or by amendment to an existing JEDD contract. Continuing law requires municipal corporations, townships, and counties to make certain documents available for public inspection before adopting or amending a JEDD contract. Among these documents is a map in sufficient detail to denote the specific area included in the JEDD. The bill specifies that, in addition to the map, the contracting parties must identify the parcel number of each excluded parcel.<sup>6</sup>

Current law neither explicitly authorizes nor prohibits the designation of excluded parcels within the territory of a JEDD. There is no express statutory requirement that a JEDD be designated by a single continuous boundary.

### **JEDD income tax**

To the extent authorized under a JEDD contract, continuing law allows the JEDD board of directors to levy an income tax within the JEDD. The JEDD income tax is administered by a municipal corporation that is a contracting party. The tax rate may not exceed the highest rate levied by a municipal corporation that is a contracting party. Under continuing law, the tax base includes the income of persons working within the JEDD and the net profits of businesses operating within the JEDD.

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<sup>5</sup> R.C. 715.72(E)(1)(a) and (c).

<sup>6</sup> R.C. 715.72(E)(2), (F)(5)(f), (I)(1)(b), and (L)(1).



The bill adds the income of persons living within the JEDD to the income tax base. Currently, the tax does not apply to such individuals except to the extent that the individual's income is earned from services rendered in the JEDD.<sup>7</sup>

The bill modifies the purposes for which the revenue derived from a JEDD income tax may be used. Under current law, JEDD income tax revenue must be used for "the purposes of the district . . . and for the purposes of the contracting parties."<sup>8</sup> The bill requires that such tax revenue be used to carry out the economic development plan for the JEDD and for any other "lawful purpose" of the contracting parties pursuant to the contract, including, specifically, the provision of utility services. Continuing law unchanged by the bill requires that the contracting parties annually set aside a percentage of the JEDD income tax revenue for the long-term maintenance of the territory included in the JEDD.<sup>9</sup>

### **Contents of the JEDD contract**

The bill explicitly requires JEDD contracts to include an economic development plan for the JEDD, the procedures for appointing the board of directors of the JEDD, and the statutory prohibition against municipal annexation of unincorporated JEDD territory. Current law requires the contracting parties to develop an economic development plan for the JEDD and procedures for appointing the board of directors, but does not directly mandate that such items be included in the JEDD contract. Similarly, the annexation provision is identical to existing law but is not currently required to be incorporated into the JEDD contract.<sup>10</sup>

### **Petition requirements**

The bill makes several changes to the procedure for circulating petitions before approving a JEDD contract or amendment. Continuing law requires the contracting parties, before adopting the contract or amendment, to circulate petitions to the owners of real property and businesses located in the JEDD. The petitions must specify that a copy of the JEDD contract or amendment, a description of the area to be included in the JEDD, and, if applicable, a schedule for the collection of the income tax are available for public inspection. No contracting party may formally approve the contract or amendment until the petitions are signed by a majority of the owners of real property

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<sup>7</sup> R.C. 715.72(F)(5).

<sup>8</sup> R.C. 715.74(C)(1) of current law.

<sup>9</sup> R.C. 715.72(F)(5)(a) and (e).

<sup>10</sup> R.C. 715.72(F)(3), (4), and (6).



located in the proposed JEDD and the majority of the owners of businesses located there.

The bill specifies that the petitions to be circulated among property owners need be circulated only among the "record owners" of real property, meaning the person or persons in whose name a parcel is listed on the county tax list or tax-exempt list. Regarding the petition to be circulated among business owners, the bill specifies that "owners" who may validly sign a petition includes only a partner of a partnership, a member of a limited liability company, a majority shareholder of an S corporation, a person with a majority ownership interest in a pass-through entity, or any officer, employee, or agent with authority to make legally binding decisions. The bill also clarifies that a business "operates within" the district if the net profits of the business or the income of employees of the business would be subject to an income tax levied within the district.

Under the bill, the petitions circulated by the contracting parties must clearly indicate that, by signing the petition, the property or business owner consents to the JEDD contract or amendment. The bill also authorizes the contracting parties to send written notice of the petitions by certified mail with return receipt requested to the last known mailing address of property and business owners. If an owner signs to accept delivery of the notice and does not respond to the contracting party within 30 days of the date the notice is sent, the owner is deemed by default to have signed the petitions.<sup>11</sup>

### **Amending a JEDD contract**

Continuing law allows the contracting parties to amend an existing JEDD contract for the purpose of adding new territory to the JEDD. Such an amendment is approved upon the adoption of a resolution or ordinance by each of the contracting parties. Each contracting party, before adopting the resolution or ordinance, is required to hold a public hearing on the amendment and give at least 30 days' public notice of the time and place of the hearing in a newspaper of general circulation in the municipal corporation, township, or county, as applicable. Furthermore, the contracting parties are required to circulate petitions to the record owners of real property and the owners of businesses operating within the area to be added to the JEDD. The petitions are circulated and signed in accordance with the same rules and procedures for new JEDD contracts (described above).

The bill requires the contracting parties, within ten days after adopting an amendment that adds territory to a JEDD, to send notice of the amendment to each record owner of real property and the owner of each business operating within the

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<sup>11</sup> R.C. 715.72(A)(4) through (7), (J), and (K).



territory added to the JEDD. The contracting parties are not required to send notice to property and business owners that signed the petitions circulated before the adoption of the amendment or that, by not responding, were deemed to approve of the JEDD's creation. Otherwise, the bill's notice requirement for amendments is identical to the requirement that applies to the adoption of new JEDD contracts.

The bill authorizes contracting parties to remove territory from a JEDD or designate excluded parcels by amending the JEDD contract. An amendment removing territory or designating excluded parcels must be adopted in the same manner as an amendment that adds territory to the JEDD except that the petition and notice requirements do not apply to such amendments.<sup>12</sup>

### **Notice to counties**

The bill eliminates the requirement that the contracting parties send notice to each affected county before and after adopting a JEDD contract. Under current law, the board of county commissioners of each county in which a contracting party is located is entitled to a copy of the JEDD contract and certain related documents before and after the contract is adopted.<sup>13</sup> Under the bill, the contracting parties would be required to send such documentation only if the county is a party to the JEDD contract.

### **Application for exemption from JEDD income tax**

The bill establishes a procedure by which the owner of a business operating within a JEDD may apply to the Director of Development Services for exemption from the income tax on behalf of the business and its employees. The owner's application must be submitted to the Director within six months of the effective date of the JEDD contract. The application must establish all of the following: (1) that the business operated within the unincorporated area of the JEDD before the effective date of the contract, (2) that no owner of the business signed or was deemed to have signed the petition for approving the contract (described above), and (3) that neither the business nor its employees has derived or will derive any material benefit from the services, facilities, and improvements described in the economic development plan for the JEDD or that any material benefit derived is negligible in comparison to the income tax revenue generated from the net profits of the business and the income of its employees.

A business owner applying for exemption from the JEDD income tax must submit a copy of the application to the Director and to the legislative authority of each contracting party. Any or all of the contracting parties may submit a written response to

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<sup>12</sup> R.C. 715.72(L).

<sup>13</sup> R.C. 715.75 and 715.76 of current law.



the application. The response must be delivered to the Director and to the business owner.

The Director is required to make a determination with respect to the application between 30 and 60 days after receiving the application. The determination may be made later if the business owner and the contracting parties consent. The Director may, but is not required to, hold a hearing on the application and request the presence of the business owner and one or more contracting parties to present relevant evidence. If the Director determines that the applicant has demonstrated that all of the previously described criteria are met, the net profits of the business and the income of its employees are exempt from the JEDD income tax. If the Director determines that the criteria have not been met, the Director is required to deny the application. The Director is required to send notice of the determination to the business owner and each contracting party.<sup>14</sup>

The applicant business owner or the contracting parties may appeal the Director's determination to the Court of Common Pleas of the county in which the majority of the territory of the JEDD is located. An appeal is initiated by filing a notice of appeal to the Court and to the Director within 30 days of the date the Director sends notice of the determination. Notice of the appeal must also be served upon the applicant business owner and each contracting party.

The bill requires the Court to evaluate the appeal based on the reasonableness of the Director's determination with respect to the application. If the Court determines the Director's determination was reasonable, the Court is required to uphold the determination. If the Court determines that the Director's determination was not reasonable, the Court is required to reverse the determination. The Court may choose to hear the appeal on the record and the evidence already submitted or may elect to consider additional evidence. The Court must send notice of its determination to the Director, the applicant business owner, and each contracting party. The Court's determination on the appeal is final.<sup>15</sup>

## **Enterprise zones**

Enterprise zones are areas designated by a municipal corporation or county for the purpose of fostering economic development. The municipal corporation or county may enter into enterprise zone agreements with businesses that establish, expand, or relocate within the zone in exchange for property tax and other incentives or

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<sup>14</sup> R.C. 715.72(Q).

<sup>15</sup> R.C. 715.72(R).





governmental support negotiated as part of the enterprise zone agreement. For a municipal corporation to designate a zone, it must be a principal city of a Metropolitan Statistical Area as defined by the U.S. Office of Management and Budget; any county may designate a zone with the consent of the affected municipal corporation or township. The minimum criterion for having a zone designated is that the zone has a population of at least 4,000 (municipal zones) or 1,000 (county zones). If other additional criteria that are indicative of economic distress are also satisfied, incentives may be offered to a somewhat broader range of companies are eligible to receive incentives. If only the population criterion is satisfied, companies are eligible for incentives only if they establish new operations in the zone without reducing employment elsewhere in Ohio, relocate from another state, expand at an existing site within the zone, or relocate from elsewhere in Ohio and obtain a special waiver from Development Services Agency (DSA) indicating that the relocation is necessary.

### **Certification of the zone**

Under continuing law, a municipal corporation or county seeking to designate an enterprise zone must submit a petition to the DSA for certification. DSA examines the petition to determine if all of the criteria for establishing a zone are met before certifying the zone. One such criteria bars any place of business used primarily for making retail sales (unless located in an impacted city<sup>16</sup>) from inclusion in the zone. Under the bill, a municipal corporation or county seeking to include a retail facility in an enterprise zone may petition the board of education of each school district affected by the proposed zone to waive this retail facilities exclusion. The school boards may waive the exclusion by adopting a resolution approved by the majority of board members.

The bill specifies that, by waiving the retail facilities exclusion, a school board does not waive its right to approve enterprise zone agreements or receive notice of the agreements as required by ongoing law. Ongoing law requires enterprise zone

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<sup>16</sup> Under continuing law (not in the bill), an "impacted city" is a municipal corporation satisfying either of the following two criteria:

(1) The municipal corporation, "in an attempt to cope with the problems of urbanization, to create or preserve jobs, and employment opportunities, and to improve the economic welfare" of its residents, has done both of the following at some time:

(a) Taken affirmative action to permit a metropolitan housing authority to construct or lease housing within the municipal corporation.

(b) Has had a program for community development certified by DSA.

(2) Been declared a major disaster area under pertinent federal law and has been extensively damaged or destroyed by a major disaster (i.e., tornado, hurricane, flooding, fire, earthquake, or storm). A municipal corporation may qualify under this provision only for up to two years. (R.C. 1728.01.)



agreements to be approved by school boards if the property tax exemption percentage exceeds specified percentages of the otherwise taxable value (75% in most cases) and if the exemption continues for more than ten years.<sup>17</sup>

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## HISTORY

ACTION	DATE
Introduced	04-30-15
Reported, H. Economic & Workforce Development	12-03-15

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<sup>17</sup> R.C. 5709.61, 5709.634, and 5709.82.

