



Ohio Legislative Service Commission

Bill Analysis

Mackenzie Damon

Sub. H.B. 233

131st General Assembly
(As Reported by S. Ways and Means)

Reps. Schuring, Ashford, Baker, Blessing, Boyd, Fedor, Hackett, Hambley, Kraus, Lepore-Hagan, Patmon, Reineke, Scherer, Sears, Sheehy, Green, McColley, Brown, R. Smith, Amstutz, Anielski, Antonio, Arndt, Boccieri, Boose, Boyce, Buchy, Burkley, Celebrezze, Cera, Clyde, Conditt, Craig, Cupp, Derickson, Dever, Dovilla, Driehaus, Duffey, Ginter, Grossman, Hagan, Hall, Hayes, Henne, Hill, Howse, Huffman, G. Johnson, Kuhns, Leland, Maag, Manning, M. O'Brien, S. O'Brien, Patterson, Pelanda, Ramos, Reece, Retherford, Rezabek, Rogers, Romanchuk, Ruhl, Ryan, Schaffer, Slaby, Slesnick, K. Smith, Stinziano, Strahorn, Sweeney, Sykes, Terhar, Young, Zeltwanger, Rosenberger

Sen. Tavares

BILL SUMMARY

Downtown redevelopment districts

- Establishes a procedure by which municipal corporations may create downtown redevelopment districts (DRDs) for the purposes of rehabilitating historic buildings and promoting economic development.
- Authorizes the municipal corporation to exempt up to 70% of the increased value of real property in the DRD from taxation and to collect service payments in lieu of taxes from the property owners.
- Requires that an ordinance creating a DRD describe the area included in the district, the number of years the DRD will exist, and an economic development plan.
- Requires the municipal corporation to hold a public hearing on the proposed DRD ordinance and give notice of the hearing to each property owner in the district.
- Requires that the territory of a DRD contain at least one historic building and prohibits the inclusion of areas used exclusively for residential purposes.
- Restricts the lifetime of DRD exemptions to ten years or, with the approval or reimbursement of affected school districts, 30 years.

- Authorizes the designation of an innovation district within a new or existing DRD if the district includes an area equipped with a high-speed broadband network capable of download speeds of at least 100 gigabits per second.
- Authorizes property owners in a DRD to enter into agreements with the municipal corporation to impose a redevelopment charge on the property, as a covenant running with the land, for any period of time not exceeding the life of the DRD.
- Requires each municipal corporation that creates a DRD to establish a special fund for the deposit and dispersal of service payments and redevelopment charges.
- Authorizes the use of DRD funds for grants and loans to owners of historic and nonhistoric buildings, contributions to special improvement districts (SIDs) and community improvement corporations (CICs) to promote the district, for financing public infrastructure improvements, and, if the DRD includes an innovation district, for grants and loans to technology-oriented businesses, incubators, and accelerators.
- Requires the municipal corporation that created the DRD to file an annual report to the Development Services Agency (DSA) on the progress of DRD projects and services and the expenditure of money from the district's special fund.
- Requires the Director of Development Services to devise and adopt a system to track information necessary to anticipate the tax revenue impact of historic preservation tax credits in current and future fiscal years.

Charitable use exemption

- Exempts property used for a charitable, educational, or public purpose from taxation, regardless of its owner, if a public or charitable organization holds a long-term lease to use the property for one of those purposes.
- Specifically extends the charitable use property tax exemption to certain kinds of museums that are open to the public and belong to a public or charitable organization.
- Expands an existing property tax exemption for certain kinds of historic structures under renovation that are conveyed to a nonpublic, noncharitable organization by including such museums and reducing the proportion of the structure's space that must be used for the exempt purpose.

Lodging tax for Lake Erie shoreline improvements

- Clarifies the permissible uses of revenue from a recently authorized lodging tax levied to fund the construction of port authority facilities near the Lake Erie shoreline.

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CONTENT AND OPERATION

Downtown redevelopment districts

DRD overview

The bill establishes a procedure by which municipal corporations may designate "Downtown Redevelopment Districts" (DRDs) for the purposes of rehabilitating historic buildings, creating jobs, and encouraging economic development in commercial and mixed-use commercial and residential areas. The rules and procedures associated with DRDs are similar to those that apply, under continuing law, to tax increment financing (TIF) districts. Under the bill, a municipal corporation would be authorized to exempt a percentage of the increased value of parcels located within the DRD from property taxation and require the owners of such parcels to make service payments in lieu of



taxes. The revenue derived from the service payments would be used for the economic development purposes prescribed by the bill.¹

Prerequisites to creation

DRDs would be created by ordinance of the legislative authority of a municipal corporation. The ordinance creating a DRD must describe the area included in the district, the number of years the DRD will exist, and an economic development plan. Municipal corporations adopting a DRD ordinance are subject to the same hearing and notice requirements that apply to political subdivisions designating a TIF district. Specifically, the municipal corporation is required to hold a public hearing on the proposed ordinance at least 30 days before voting to adopt the ordinance. At least 30 days before the hearing, the municipal corporation must give notice of the hearing and the ordinance to each owner of real property located within the proposed district. The notice must be delivered by first class mail.²

Area of the district

The area included in a DRD must be enclosed by a continuous boundary and consist of no more than ten acres. The DRD may not include areas used exclusively for residential purposes or exempted from taxation under an existing TIF ordinance. The DRD must include at least one historic building that is in the process of being rehabilitated, or that will be rehabilitated after designation of the district. Under the bill, "historic building" has the same meaning as when used in the context of the state historic building rehabilitation tax credit: the building must be listed on the National Register of Historic Places, listed as a historic landmark, or located in a registered historic district and certified by the State Historic Preservation Officer as being of historic significance to the district.³

Length of exemptions

The property tax exemptions authorized as a component of DRD law are generally prohibited from lasting longer than ten years. However, the exemptions may last up to 30 years if the municipal corporation creating the DRD either obtains the approval of each school district affected by the exemptions or reimburses each such

¹ R.C. 5709.45(B).

² R.C. 5709.45(B) and (D).

³ R.C. 5709.45(A) and (B).



school district for any foregone property tax revenue. The process for obtaining school district approval is identical to the process applicable under existing TIF law.⁴

Economic development plan

The economic development plan for a DRD must include a statement describing the purposes and goals of the district, an explanation of how the municipal corporation will collaborate with businesses and owners of property within the district, and a plan for using the revenue generated from the property owners' payments in lieu of taxes. If the municipal corporation intends to use those payments to finance public infrastructure improvements, the economic development plan must identify specific projects that will be funded and describe how the projects will accommodate additional demands on the existing infrastructure within the district.⁵

Innovation districts

If an existing or proposed DRD includes, within its boundaries, an area equipped with a high-speed broadband network capable of download speeds of at least 100 gigabits per second, the municipal corporation may designate an "innovation district" within the DRD. The purpose of an innovation district is to attract and facilitate growth of technology-oriented businesses and to support the economic development efforts of business incubators and accelerators. The life of an innovation district and the percentage of the tax exemption for parcels within the innovation district would be identical to those of the DRD. A DRD ordinance that designates an innovation district must describe the boundaries of the innovation district, identify the permanent parcel numbers of each parcel included in the innovation district, and stipulate a separate economic development plan for the innovation district.⁶

Service payments

A DRD would generate revenue in the same manner as a TIF. The legislative authority of the municipal corporation that adopted the DRD ordinance may exempt up to 70% of improvements to parcels located within the district. As a result, no taxing authority may collect property taxes on that portion of the increased property value.⁷

⁴ R.C. 5709.45(B), (F), and (G).

⁵ R.C. 5709.45(B)(5) and (E)(4).

⁶ R.C. 5709.45(A)(5) through (9) and (C).

⁷ R.C. 5709.45(B).



In lieu of the taxes on the exempted portion of increased property value, the municipal corporation receives annual payments, called "service payments," from the owners of the exempted property. Service payments are equal to the amount of real property taxes that would have been charged on the value exempted from taxation. They are collected and distributed at the same time and in the same manner as real property taxes, but the entire amount must be distributed to the municipal downtown redevelopment district fund of the municipal corporation that created the DRD.⁸

As with current TIFs, revenue from certain special-purpose levies may not be diverted; the revenue continues to be received by the taxing unit that imposes it. This applies to certain levies enacted after January 1, 2006, and after the date the ordinance authorizing the DRD is adopted. These levies are not actually imposed on the exempted portion of the property – it is legally tax-exempt – but the DRD service payments are paid to the taxing unit as if the levy were imposed, instead of being diverted to the DRD fund. The special levies that qualify for this treatment are the same levies prescribed under existing TIF law: community mental retardation and developmental disabilities programs and services; senior citizens services or facilities; county hospitals; alcohol, drug addiction, and mental health services; library purposes; children services; zoos; parks; joint recreation districts; public assistance, health and social services; and general health districts.⁹

Also, as with municipal TIF incentive districts, counties are entitled to 50% of the taxes from their general fund inside millage that would have been collected on the increased value of property in a district if not for the tax exemption, unless an agreement is reached to the contrary. This portion of the service payments must be deposited into the county general fund instead of the municipal corporation's municipal downtown redevelopment district fund.¹⁰

Redevelopment charges

The bill authorizes owners of property within a DRD to enter into agreements with the municipal corporation that created the district to impose a "redevelopment charge" on the property. A redevelopment charge is in addition to service payments collected in lieu of taxes and, if the property is leased to one or more tenants, the charge may be itemized as part of the lease rate. When collected, redevelopment charges are deposited to the municipal downtown redevelopment district fund and are subject to

⁸ R.C. 5709.46 and 5709.47.

⁹ R.C. 5709.45(H).

¹⁰ R.C. 5709.913.



the same usage limitations as other DRD funds (i.e., service payments and other municipal contributions¹¹).

A redevelopment charge agreement must specify the amount of the redevelopment charge. The charge may be a fixed dollar amount or a variable amount determined on the basis of the assessed valuation of the property or all or part of the profits, gross receipts, or other revenues of a business operating on the property. The agreement must also specify the terms by which the municipal corporation will collect the charge, the termination date of the charge (no later than the expiration or termination of the DRD), and the purposes for which the charge may be used. The charge may be used for any or all of the purposes designated in the DRD ordinance (see "**Use of revenue**," below).

A redevelopment charge is a covenant running with the land. If property subject to a redevelopment charge is sold or otherwise transferred, the next owner is fully obligated to pay the charge. Purchase agreements for real estate subject to a redevelopment charge are not binding upon the purchaser unless the agreement specifically references the charge.

The redevelopment charge agreement may specify the manner in which unpaid redevelopment charges are collected. If no method is specified under the terms of the agreement, the municipal corporation may certify the unpaid charge to the county auditor for entry on the tax list. The charge is then a lien on the property and would be collected in the same manner as real property taxes.¹²

Use of revenue

The bill prescribes numerous purposes for which the revenue derived from DRD service payments may be used. DRD funds may be used for a broader range of purposes than TIF funds. One such purpose is to finance grants and loans to owners of historic buildings and other property located within the district. The proceeds of the grant or loan must be used by the owner to rehabilitate a historic building or make repairs and improvements to a nonhistoric building. If the municipal corporation awards such a loan or grant, it must develop a plan for tracking the building owner's use of the funds and the progress of the rehabilitation or improvement project.¹³

¹¹ See R.C. 5709.45(J).

¹² R.C. 5709.45(M).

¹³ R.C. 5709.45(E)(1) and (3).



DRD funds may also be used to make contributions to special improvement districts (SIDs), community improvement corporations (CICs), or to a nonprofit corporation organized for the purpose of redeveloping historic buildings and districts. A SID or CIC receiving the funds must use them to promote the district to potential business patrons, to recruit businesses to relocate to or expand in the district, and to attract and promote events and activities that generate or enhance public welfare within the district. They also must periodically report to the municipal corporation that contributed the funds on expenditures of past contributions and plans for utilization of future contributions. The total contribution of DRD funds to SIDs, CICs, and nonprofit corporations may not exceed the property tax revenue that would have been generated by 20% of the assessed value of the exempted improvements within the DRD.¹⁴

Similar to the lawful use of TIF funds, DRD funds may be used to finance public infrastructure improvements to the extent authorized in the ordinance creating the district. Under continuing law, "public infrastructure improvements" include public roads and highways; water and sewer lines; environmental remediation; land acquisition, including acquisition in aid of industry, commerce, distribution, or research; demolition, including demolition on private property when determined to be necessary for economic development purposes; stormwater and flood remediation projects, including such projects on private property when determined to be necessary for public health, safety, and welfare; the provision of gas, electric, and communications service facilities, including the provision of gas or electric service facilities owned by nongovernmental entities if necessary for economic development purposes; and the enhancement of public waterways through improvements that allow for greater public access.¹⁵

If a DRD includes an innovation district, the funds may be used to finance grants and loans to technology-oriented businesses and to incubators and accelerators that provide services and capital to such businesses within the innovation district. The grants and loans must be awarded on the condition that the recipient use the funds to start or develop one or more technology-oriented business within the innovation district. The bill requires the municipal corporation that awarded the grant or loan to develop a plan for tracking the recipient's use of the funds and the progress of the technology-oriented businesses.

¹⁴ R.C. 1710.14, 1724.12, and 5709.45(E)(2).

¹⁵ R.C. 5709.45(A)(3) and (E)(4).



Reporting requirements

A municipal corporation is required to notify the Development Services Agency (DSA) within 15 days after adopting an ordinance that creates a DRD. By March 31 of each year thereafter, the municipal corporation must submit a progress report to DSA that includes all of the following:

- The progress of the projects and services provided in the DRD for each year that an exemption remains in effect, including a summary of the receipts from service payments in lieu of taxes;
- Expenditures of money from the municipal downtown redevelopment district fund;
- A description of the projects and services financed with such expenditures;
- A quantitative summary of changes in employment and private investment resulting from each project and service.

Unlike under TIF law, there is no requirement that the municipal corporation creating a DRD report to the county in which the district is located.¹⁶

Other TIF-like provisions

Downtown redevelopment districts would be subject to the following provisions of continuing law that apply to TIFs:

- Bonds issued by the municipal corporation, or by a school board receiving some of the DRD service payments, do not count toward their respective statutory debt limits to the extent service payments are pledged to paying debt charges;
- Service payments do not count toward the private investment commitment required for a municipal annexation to qualify for the expedited procedures reserved for significant economic development projects;
- The exempted value of property is treated as taxable for the purpose of computing the amount of payment due to a township after a municipal annexation occurs involving commercial or industrial property and the

¹⁶ R.C. 5709.45(K).

boundaries are conformed (i.e., the township ceases to exist and have taxing authority in the annexed territory);

- The exempted value of property would not be included in the value of tax-exempt property for the purpose of the school foundation funding computation for a school district with a high proportion of tax-exempt property in its territory;
- Service payments may be used to contribute to the cost of transportation facilities jointly financed with the Department of Transportation;
- Affected school boards must be notified in advance of the creation of the DRD even if service payments do not have to be shared with the school board;
- Some of the service payments may be shared with other taxing units affected by the tax exemption;
- A local tax incentive review board must be created to monitor the DRD.¹⁷

Fiscal impact of historic preservation tax credits

The bill requires the Director of Development Services to work in consultation with the Director of Budget and Management and develop a system of anticipating the tax revenue impact of historic preservation tax credits in current and future fiscal years. The system may include tracking the number of applications approved, the estimated rehabilitation expenditures and rehabilitation period associated with such applications, the number of tax credit certificates issued, and any other relevant information.¹⁸

Charitable use exemption

The bill makes several changes to an existing property tax exemption for certain property used for charitable, educational, or public purposes. Under continuing law, real property belonging to a charitable or educational institution, the state, or a political subdivision ("public or charitable user") is exempt from taxation if the property is used for a charitable, educational, or public purpose, including as a performing arts center.

¹⁷ R.C. 133.04, 133.06, 709.024, 709.19, 3317.021, 5501.311, 5709.82, 5709.83, 5709.831, and 5709.85.

¹⁸ R.C. 149.311(I).



Charitable use involving long-term lessees

Courts have construed current law to authorize this exemption only if the public or charitable user owns the property.¹⁹ The bill authorizes the exemption even if the public or charitable user has only a leasehold interest in the property, provided the lease has a remaining term that exceeds the property's recovery period, commonly referred to as its useful life, for purposes of certain federal income tax depreciation procedures.²⁰ For nonresidential real property, the recovery period is 39 years.²¹

The same recovery period applies in the context of the federal historic rehabilitation tax credit. Rehabilitation expenditures incurred by the building's lessee do not qualify for that credit unless the lease's remaining term equals or exceeds that 39-year recovery period.²² Ohio law refers to such a lessee as a "qualified lessee."²³ The bill essentially qualifies property for the charitable use exemption if the property's public or charitable user is a qualified lessee, regardless of the status of the property's owner.²⁴

Specific exemption for museum property

The bill specifically qualifies property used for a children's, science, history, or natural history museum that is open to the public for the charitable use exemption if the property's owner or qualified lessee is a public or charitable user.²⁵ The bill specifies that a museum is considered to be open to the public if it is accredited by the American Alliance of Museums or its successor.²⁶ Under current law, such museum property may already qualify for the charitable use exemption because the exemption applies not only to performing arts centers but also to property used for any charitable, educational, or public purpose.²⁷

¹⁹ *ShadoArt Prods., Inc. v. Testa*, 2016-Ohio-511, ¶ 34.

²⁰ R.C. 5709.121(D)(1).

²¹ 26 U.S.C. 168(c).

²² 26 U.S.C. 47.

²³ R.C. 149.311.

²⁴ R.C. 5709.121(D)(1).

²⁵ R.C. 5709.121(A)(1)(b).

²⁶ R.C. 5709.121(D)(2)

²⁷ R.C. 5709.121(A)(1)(c).



Exemption for transferred rehabilitation property

The bill expands an existing tax exemption that currently applies only to a performing arts center housed in a historic structure under renovation that has been conveyed to a nonpublic, noncharitable organization. Under current law, property owned by a public or charitable user and used as a performing arts center continues to be exempt from taxation even if it has been conveyed to an entity that is not a public or charitable user. However, the exemption continues to apply only if certain conditions are satisfied, including that the property continues to be used for performing arts, a federal historic rehabilitation tax credit is being sought, and the current owner is either partly owned by a 501(c)(3) federally tax exempt organization or leases the property back to the prior owner (or an affiliate thereof).

The bill expands this exemption in three ways. First, the bill extends the exemption to property used for children's, science, history, and natural history museums that are open to the public—the same kinds of museums to which the bill specifically extends the charitable use exemption (see "**Specific exemption for museum property**," above).²⁸

Second, only 45% of the property's useable rental space need be leased back to the prior owner and only 45% of the property's useable rental space need be used for performing arts or museum purposes.²⁹

Finally, the bill no longer requires the property to have been "owned by" a public or charitable user prior to conveyance. Instead, property may qualify for the exemption if that user is a qualified lessee that conveys its leasehold interest to an entity that is not a public or charitable user, regardless of the property owner's status.³⁰

Exemption applications

The bill changes who may apply for the performing arts center exemption. Under current law, either the property's current owner or the property's occupant may file an application for exemption. The bill no longer permits the property's occupant to apply unless that occupant is the prior owner holding the leasehold interest. If the conveyance was of a leasehold interest between qualified lessees, the bill authorizes the qualified lessee to which the property is conveyed to file an exemption application.³¹

²⁸ R.C. 5709.121(A)(1)(b) and (B).

²⁹ R.C. 5709.121(B)(1)(b)(i) and (B)(1)(e).

³⁰ R.C. 5709.121(B)(1) and (B)(1)(b).

³¹ R.C. 5709.121(B)(2) and 5739.09(M) (not in the bill).



Lodging tax for Lake Erie shoreline improvement

Continuing law authorizes a county to levy a lodging ("bed") tax of up to 2% to fund the construction of port authority facilities near the Lake Erie shoreline. Under continuing law, a port authority is authorized to use the lodging tax revenue to "construct" and "finance" such facilities. The bill elaborates on the meaning of "construct" in this provision, specifying that "construction" may include acquisition, alteration, construction, creation, development, enlargement, equipment, improvement, installation, reconstruction, remodeling, renovation, or any combination thereof.

The authority to levy the additional lodging tax was provided in Am. Sub. H.B. 64 of the 131st General Assembly. A county may levy the tax if the county already levies a 3% lodging tax and if the length of Lake Erie shoreline in the county is at least 50% of county's border with other Ohio counties. The county must pledge the tax revenue to the port authority, which must construct the port authority facilities within one mile of Lake Erie.³²

COMMENT

The bill permits a municipal corporation that creates a DRD to use payments in lieu of taxes to finance grants and loans to owners of historic buildings and other real property within the DRD as well as technology-oriented businesses, business incubators, and business accelerators operating within an innovation district. It is possible that these provisions could be judicially interpreted to, or applied in ways that, violate Ohio's constitutional prohibition against "rais[ing] money for, . . . loan[ing] credit to, or in aid of" private enterprise.³³

The Ohio Constitution generally prohibits "private interests from tapping into public funds at the taxpayer's expense," regardless of direct or indirect public benefits arising from government investment is such a private enterprise.³⁴ However, the Ohio Supreme Court has upheld expenditures for private enterprise by the state and its subdivisions if the expenditure is undertaken for "public welfare" and not to "subsidize commerce or industry."³⁵ Furthermore, the Constitution explicitly permits public expenditures in private enterprise that "enhance the availability of adequate housing" or

³² R.C. 4582.56.

³³ Ohio Const., Article VIII, Sec. 6.

³⁴ *C.I.V.I.C. Group v. City of Warren*, 88 Ohio St.3d 37, 40 (2000).

³⁵ *State ex rel. Tomino v. Brown*, 47 Ohio St.3d 119, 122 (1989).



"create or preserve jobs and employment opportunities" by investing in "industry, commerce, distribution, and research."³⁶

HISTORY

ACTION	DATE
Introduced	05-27-15
Reported, H. Gov't Accountability & Oversight	10-22-15
Passed House (91-0)	10-27-15
Reported, S. Ways & Means	04-07-16

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³⁶ Ohio Const., Article VIII, Secs. 13 and 16.

