



# OHIO LEGISLATIVE SERVICE COMMISSION

## Final Analysis

Mackenzie Damon

### Sub. H.B. 69

132nd General Assembly  
(As Passed by the General Assembly)

**Reps.** Cupp, Blessing, Dever, Hambley, Hill, Faber, Seitz, Arndt, Carfagna, Anielski, Antonio, Barnes, Brenner, Edwards, Galonski, Ginter, Holmes, Householder, Kent, Manning, O'Brien, Patterson, Patton, Reineke, Riedel, Rogers, Slaby, Sweeney, Thompson, West, Young

**Sens.** Brown, Dolan, Eklund, Hoagland, Huffman, Lehner, Manning, O'Brien, Oelslager, Sykes, Terhar, Wilson, Yuko

**Effective date:** March 23, 2018; appropriations effective December 22, 2017

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## ACT SUMMARY

- Requires reimbursement of township fire and emergency medical service levy revenue foregone because of the creation of a municipal tax increment financing (TIF) incentive district.
- Stipulates that the reimbursement requirement applies only if the township provides fire, emergency medical, or ambulance services in the incentive district, and only if the ordinance creating the district was adopted on or after the act's March 23, 2018, effective date.
- Authorizes the board of trustees of such a township to waive the reimbursement requirement or to negotiate an agreement for partial reimbursement with the municipal corporation creating the TIF district.
- Allows municipal corporations and townships that created a joint economic development zone (JEDZ) to remove territory from the zone.
- Allows townships to negotiate enterprise zone agreements with retail businesses after the impacted school district waives the retail facilities exclusion.

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\* This version updates the effective date.

- Specifies that a school district's waiver of the retail facilities exclusion applies on a facility-by-facility basis.
- Allows counties and transit authorities to levy their local sales and use taxes in increments of either 0.1% or 0.25%, beginning July 1, 2018.
- Increases the transition payments to be made to counties and transit authorities to mitigate their sales tax revenue loss from the cessation of the sales tax on Medicaid managed care services provided by health insuring corporations, and appropriates up to an additional \$80 million for the payments.
- Removes a requirement related to the certification of property tax levy resolutions to the county auditor.

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## **CONTENT AND OPERATION**

### **Fire and EMS levy reimbursement in municipal TIF districts**

#### **Overview of tax increment financing**

Under continuing law, tax increment financing (TIF) is a mechanism available to municipalities, townships, and counties to finance public infrastructure improvements and, in certain circumstances, residential rehabilitation. TIFs operate by authorizing a county, municipal corporation, or township to grant a real property tax exemption with respect to the incremental increase in assessed valuation of designated parcels after the designation. Owners of the property make payments in lieu of taxes to the political subdivision that created the TIF equal to the amount of taxes that would otherwise have been paid with respect to the exempted improvements ("service payments"). TIFs thereby create a flow of revenue back to the political subdivision that granted the tax exemption equal to the amount of property tax that otherwise would have been paid on the increased property value to finance infrastructure or residential rehabilitation projects.

A TIF may be comprised of specific parcels or may be what is called an "incentive district." An incentive district TIF is an aggregation of individual parcels in an area of not more than 300 acres that is enclosed by a continuous boundary and that satisfies certain criteria of economic distress or inadequate infrastructure.<sup>1</sup>

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<sup>1</sup> R.C. 5709.40(A)(5).



## Special-purpose tax levies

The revenue from certain special-purpose tax levies may not be diverted by an incentive district TIF. Some portion of the service payments must be paid to the taxing authorities levying the special-purpose taxes to reimburse them for revenue foregone due to the tax exemption. The levies are not actually imposed on the exempted portion of the TIF property – that portion is legally tax-exempt – but the TIF service payments are paid to the taxing authority as if the levy were imposed instead of being diverted to the TIF fund.

Special-purpose levy reimbursement payments are required only under certain conditions. The TIF must be an incentive district TIF created on or after January 1, 2006, and the reimbursed levy must be approved at an election held on or after that date. If the levy is a renewal or replacement of a levy originally imposed before that date, only an increase in effective millage is reimbursed. Finally, the levy must be for one of the following purposes:

- (1) Community mental retardation and developmental disabilities programs and services;
- (2) Senior citizens services or facilities;
- (3) County hospitals;
- (4) Alcohol, drug addiction, and mental health services;
- (5) Libraries;
- (6) Children services;
- (7) Zoological park services and facilities;
- (8) Township park districts;
- (9) Joint recreation district parks and recreational purposes;
- (10) Park district purposes;
- (11) Making appropriations for public assistance, human or social services, public relief, public welfare, public health and hospitalization, or support of general hospitals;



(12) General health district programs.<sup>2</sup>

### **Township fire and EMS levies**

The act adds township fire, emergency medical, and ambulance levies to those for which reimbursement payments must be made by a municipal incentive district TIF. Reimbursement payments are required only if the township levying the tax provides fire, emergency medical, or ambulance services in the incentive district, and only if the ordinance creating the incentive district is adopted after the act's March 23, 2018, effective date. The board of township trustees may waive the reimbursement requirement or negotiate an agreement for partial reimbursement with the municipal corporation that created the incentive district TIF.

Such reimbursement payments are not required for incentive district TIFs created by counties or townships.<sup>3</sup>

### **Removal of territory from JEDZ**

The act allows municipal corporations and townships that created a joint economic development zone (JEDZ) to remove territory from the zone.

#### **JEDZ overview**

Joint economic development zones (JEDZs) are territorial regions created by two or more municipal corporations, or one or more municipal corporations and one or more townships, to "facilitat[e] new or expanded growth for commercial or economic development in the state."

Since January 1, 2015, municipal corporations and townships have not been permitted to create a new JEDZ or to make "substantial amendments" to an existing JEDZ. Under continuing law, a substantial amendment includes any change to the JEDZ contract that increases the rate of municipal income tax levied in the zone or changes the purposes for which the tax may be used. Prior law also prohibited any change in the area included in the zone.

The act modifies the restriction on changing the territory of an existing JEDZ. Under the act, removing territory from a JEDZ is no longer considered a substantial

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<sup>2</sup> R.C. 5709.40(F), 5709.73(F), and 5709.78(E). R.C. 5709.73 and 5709.78 are not amended by the act, as they concern county- and township-created TIFs.

<sup>3</sup> R.C. 5709.40(F)(13).



amendment. Consequently, the parties to a JEDZ contract may remove territory from their zone. Adding territory to a JEDZ remains prohibited.<sup>4</sup>

## **Enterprise zones – retail facilities**

The act clarifies the circumstances under which a retail business may receive tax incentives and other inducements pursuant to an enterprise zone agreement. Enterprise zones are areas designated for economic development by a municipal corporation or county and certified as having met certain statutorily prescribed criteria by the Development Services Agency. Enterprise zone agreements convey property tax and other incentives to businesses that agree to establish or expand operations within, or relocate operations to, the zone.

Places of business used primarily for making retail sales are generally ineligible for enterprise zone incentives. This general rule – colloquially referred to as the retail facilities exclusion – does not apply if the zone is located in an impacted city<sup>5</sup> or if the affected school board adopts a resolution waiving the exclusion. The act modifies the school board waiver provision in two ways:

- It stipulates that a school board's waiver applies on a facility-by-facility basis and does not preclude a school board from refusing such a waiver with respect to other retail facilities.
- It adds townships as a party that may negotiate enterprise zone agreements with a retail business after a school board's waiver if the county that created the zone has delegated its enterprise zone authority to the township.<sup>6</sup>

Under continuing law, townships cannot designate an enterprise zone but may administer a county-created zone if it is located within the township and the board of county commissioners delegates the authority. This delegated authority includes the power to negotiate enterprise zone agreements with nonretail businesses.<sup>7</sup> As previously written, the school board waiver of the retail facilities exclusion identified municipal corporations and counties as parties that could negotiate enterprise zone

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<sup>4</sup> R.C. 715.691.

<sup>5</sup> An "impacted city" is a municipal corporation that is taking certain actions to counter blight and provide publicly supported housing as specified in R.C. 1728.01, not in the act. There are about 28 impacted cities, including 17 of the 20 most populous cities.

<sup>6</sup> R.C. 5709.634.

<sup>7</sup> R.C. 5709.63(G), not in the act.



agreements with a retail business after the school district's waiver – but did not mention townships.<sup>8</sup>

### **Local sales and use tax rate increments**

The act allows counties and transit authorities to levy their local sales and use taxes in rate increments of either 0.1% or 0.25%, beginning July 1, 2018.<sup>9</sup>

Continuing law authorizes counties and transit authorities to levy local sales and use taxes that "piggyback" on the state sales and use tax. All of Ohio's counties, plus eight transit authorities, levy sales and use taxes, at total rates ranging from 0.75% to 2.25%. Recently, H.B. 49 required that, beginning July 1, 2018, the rate of a county or transit authority tax could be levied in increments of 0.1% rather than in 0.25% increments, as allowed under prior law. The act instead allows rate increases in either increment beginning on that date. The change enables every county and transit authority to levy its full 1.5% authority allowed by continuing law.

### **Transition payments for Medicaid provider sales tax revenue loss**

The act increases the transition payments to be made to counties and transit authorities to mitigate their sales tax revenue loss from the cessation of the sales tax on Medicaid managed care services provided by health insuring corporations (MHICs or Medicaid MCOs) under contracts with the state.

Until recently, state and local sales taxes applied to Medicaid managed care services. However, federal law regulates how taxes on MCOs are designated and operate, and the federal Centers for Medicare and Medicaid determined that Ohio's sales tax on Medicaid MCOs was not a permissible tax under that law.

Along with the repeal of the tax, the General Assembly approved a series of two transition payments to be made to counties and transit authorities who will see a loss of "piggy-back" sales tax revenue. The payments – one in November 2017 and one in January 2018 – were calculated to cover the entire local tax loss for the fourth quarter of calendar year 2017 and some of the loss thereafter.<sup>10</sup>

The act increases the total amount to be paid in January 2018, by \$50 million, and provides for a third payment in August 2018. The amount available in August will

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<sup>8</sup> R.C. 5709.634.

<sup>9</sup> R.C. 5739.021, 5739.023, and 5739.026; Section 6 of the act.

<sup>10</sup> Section 387.20 of Am. Sub. H.B. 49 of the 132nd G.A.



equal the lesser of \$30 million or the amount of surplus revenue that would otherwise be transferred to the state's Rainy Day Fund at the end of FY 2018.

The new payments are required to be allocated using each county's or transit authority's proportionate share of average annual Medicaid MCO sales tax revenue. The previously approved January 2018 payment is to be allocated among each county and transit authority on the basis of its historical Medicaid MCO sales tax revenue, per-capita non-MHIC sales tax revenue, and a factor devised by OBM to adjust for local fiscal capacity to absorb the loss.<sup>11</sup>

### **Property tax levy certification**

The act modifies a recent change to the process for proposing a property tax levy. Under continuing law, after a taxing authority certifies to the county auditor a resolution proposing to levy a property tax and the auditor determines the rate of the tax, the taxing authority must adopt a second resolution proposing to submit the levy question to voters. Prior law required that copies of this second resolution be certified to both the board of elections and the county auditor. The act removes the requirement that a copy of the second resolution be certified to the county auditor.<sup>12</sup>

To initiate the process of submitting a tax levy question to voters under ongoing law, a taxing authority must certify a first resolution to the county auditor to obtain the tax rate required to generate a certain amount of revenue or the amount of revenue that a particular tax rate will generate, based on the current tax valuation within the subdivision's territory. Before H.B. 49, the taxing authority could then proceed to submit the tax to voters by certifying a resolution, a copy of the auditor's rate certification, and the proposed rate of the tax to the appropriate board of elections. H.B. 49 explicitly required that the taxing authority adopt a second resolution stating that the taxing authority will proceed with submitting the tax to voters.

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<sup>11</sup> Sections 3, 4, and 5 of the act, amending Sections 387.10 and 387.20 of Am. Sub. H.B. 49 of the 132nd G.A.

<sup>12</sup> R.C. 5705.03.



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## HISTORY

ACTION	DATE
Introduced	02-15-17
Reported, H. State & Local Gov't	05-10-17
Passed House (92-0)	06-21-17
Reported, S. Ways & Means	12-13-17
Passed Senate (32-0)	12-13-17
House concurred in Senate amendments (85-7)	12-13-17

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