OHIO LEGISLATIVE SERVICE COMMISSION

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Office of Research and Drafting

Legislative Budget Office

S.B. 95
133rd General Assembly

Fiscal Note & Local Impact Statement

Click here for S.B. 95's Bill Analysis

Version: As Introduced

Primary Sponsors: Sens. Peterson and Kunze

Local Impact Statement Procedure Required: Yes

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Highlights

- The bill excludes from gross receipts subject to the commercial activity tax (CAT) a megaproject supplier's receipts from the sale of tangible personal property to a megaproject operator; a "megaproject" is a large development project that satisfies certain criteria outlined in the bill. The bill also doubles the length (from 15 to 30 years) of existing incentives that may be available to operators and suppliers of megaprojects. Those incentives include job creation tax credits (JCTCs) and property tax exemptions under the enterprise zone (EZ) and community reinvestment area (CRA) programs.
- Excluding certain receipts from taxation under the CAT would reduce GRF revenue by undetermined amounts. The amount of any revenue losses would depend on Ohio Tax Credit Authority (OTCA) decisions regarding awarding JCTCs to megaproject suppliers.
- Enhancing the existing JCTC would reduce GRF revenue by undetermined amounts. As with the CAT exclusion, the size of any revenue decreases will be dependent on decisions by OTCA. Any revenue losses from these enhancements would occur 15 or more years in the future.
- The JCTC may be claimed against the personal income tax, the financial institutions tax, and the CAT. The revenue loss from the bill would be shared under codified law by the state General Revenue Fund (GRF, 96.68%), the Local Government Fund (LGF, 1.66%), and the Public Library Fund (PLF, 1.66%). Funds deposited into the LGF and PLF are distributed to counties, municipalities, townships, and public libraries according to statutory formulas and decisions by county budget commissions.
- The extension of property tax exemptions under the EZ or CRA programs would reduce revenue to schools and other local governments. As with state taxes, the revenue loss is undetermined. The amounts involved would depend on decisions made by

municipalities and counties regarding awarding such exemptions, and would occur 15 or more years in the future.

Detailed Analysis

Senate Bill 95

The bill authorizes several enhanced tax incentives for operators and certain suppliers of a "megaproject," defined by the bill as a large-scale development that meets certain investment or payroll thresholds. Before a business may qualify for any of these enhanced incentives, it must either operate a "megaproject" or sell tangible personal property to one. In order to qualify for the enhanced tax incentives, a business must apply to the Director of Development Services and be awarded a job creation tax credit (JCTC).

A megaproject is a development project that satisfies several conditions listed in the bill, including requiring "unique sites, extremely robust utility service, and a technically skilled workforce." Also, the megaproject operator must compensate employees at 300% of the federal minimum wage or more and either make at least $1 billion in fixed-asset investments in the project or create at the project at least $75 million in annual Ohio employee payroll. In addition to the megaproject's operator, certain suppliers of a megaproject are also eligible for the bill's enhanced incentives. Any business that sells tangible personal property to a megaproject may qualify for the enhanced incentives if it makes at least $100 million in fixed-asset investments in Ohio and creates at least $10 million in annual Ohio employee payroll that it maintains throughout the term of the JCTC. LSC's Bill Analysis provides the list of requirements to qualify for the enhanced tax incentives.

Job creation tax credit

The bill increases the maximum number of years a JCTC may be awarded by the Ohio Tax Credit Authority (OTCA) from 15 to 30 years for a business that is a megaproject operator or qualifying megaproject supplier. As a condition of continuing to receive annual compliance certificates during the term of the JCTC, the bill specifically requires the operator or supplier to meet the megaproject qualifications. If a megaproject supplier is awarded an enhanced JCTC, the bill authorizes the JCTC agreement to allocate all or a portion of the supplier's credit to the operator of the megaproject to which the supplier sells tangible personal property. Ohio law includes a clawback mechanism for beneficiaries of certain tax incentives that do not fulfill terms of their agreement. As with other noncompliant projects, OTCA may reduce the term or amount of a noncompliant megaproject operator's or supplier's JCTC or may require the operator or supplier to repay credits already claimed.

Commercial activity tax exclusion

Continuing law imposes the commercial activity tax (CAT) based on a business's taxable gross receipts from sales in Ohio. CAT is remitted on an annual or quarterly basis depending on the amount of taxable gross receipts, if they exceed $150,000 in a calendar year. The bill authorizes a qualifying megaproject supplier to exclude, in calculating the supplier's taxable gross receipts, any gross receipts from the sale of tangible personal property to a qualified megaproject operator.

In connection with the bill's CAT exclusion, each qualified megaproject operator is required to annually furnish to the Tax Commissioner a list of its qualifying megaproject suppliers and to update that list as needed. The Commissioner in turn is required to issue a certificate to the operator and each listed supplier containing the names of the operator and each such supplier. A supplier may qualify for the bill's CAT exclusion only if the supplier is listed on a certificate issued to the operator and its suppliers.

Property tax exemptions

The bill authorizes counties and municipal corporations to grant up to a 30-year enterprise zone (EZ) or community reinvestment area (CRA) property tax exemption to the site of a megaproject or a site owned and operated by a qualifying megaproject supplier. Under current law, EZ and CRA exemptions are generally limited to no more than a 15-year term. If either exemption is granted to a qualifying site, the property owner is required to annually certify to the county or municipal corporation that the megaproject operator or supplier holds a JCTC annual compliance certificate. If the operator or supplier does not hold such a certificate, the county or municipal corporation may terminate the exemption beginning with the tax year in which the termination decision is made.

Fiscal analysis

The CAT exclusion of gross receipts from sales of a megaproject supplier to a megaproject operator would result in a loss of revenue to the GRF and other state funds (see below). Any such revenue losses could appear within a year or two. In contrast, other fiscal effects from the bill would not appear for at least 15 years.

A JCTC is a refundable tax credit[1] that may be taken against the state's income tax, CAT, or financial institutions tax. Thus, the potential doubling of the number of years available for a JCTC will reduce revenues from those state taxes. The magnitude of tax revenue losses is indeterminate as it would be dependent on action of the OTCA and various operators and qualified suppliers of a megaproject. LBO cannot rule out the possibility that GRF fiscal losses could be substantial.

Receipts from the income tax and financial institutions tax, and 85% of CAT receipts are shared under codified law by the state General Revenue Fund (GRF, 96.68%), the Local Government Fund (LGF, 1.66%), and the Public Library Fund (PLF, 1.66%).[2] Funds deposited into the LGF and PLF are distributed to counties, municipalities, townships, special districts (generally parks), and public libraries according to statutory formulas and decisions by county budget commissions.

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[1] The credit equals a percentage of additional annual Ohio employee payroll that a business generates at an Ohio-based project above a baseline amount of payroll generated at the site in the 12 months before the site was approved for the credit. To obtain a JCTC, a business is required to apply to and enter into an agreement with OTCA which sets out specific terms and conditions a project is required to meet as a condition of receiving the credit.

[2] Under a provision of temporary law, H.B. 49 (the main operating budget act for the FY 2018-FY 2019 biennium) increased the PLF share to 1.68% (and reduced the GRF share to 96.66%). A similar provision is in the House-passed version of H.B. 166 of the 133rd General Assembly, the main operating budget for the upcoming biennium.

CAT receipts are deposited into the GRF (85%), the School District Tangible Property Tax Replacement Fund (Fund 7047, 13%), and the Local Government Tangible Property Tax Replacement Fund (Fund 7081, 2%). Distributions to Fund 7047 and Fund 7081 are used to make reimbursement payments to school districts and other local taxing units, respectively, for the phase-out of property taxes on general business tangible personal property and for reductions of assessment rates on utility personal property. Any receipts in excess of amounts needed for such payments are transferred back to the GRF.

The enhancement of property tax exemptions under the EZ or CRA programs would reduce revenue to schools and other local governments. Statewide, school districts account for about 64% of taxes on residential real property, and other units of local government receive about 36%. The potential revenue loss to schools and local governments is also undetermined.

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