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REVISED VERSION*

SUMMARY

- Simplifies the process a township must follow to donate unneeded property.
- References the Auditor of State's fraud-reporting system in the law allowing employees to report unlawful activity occurring at the workplace.
- Allows townships engaged in redevelopment to create a special tax increment financing (TIF) district with the goal of providing funding for any project delineated by the township.
- Allows a board of township trustees to appoint a deputy fiscal officer when the office of township fiscal officer becomes vacant.
- Allows a township fiscal officer's assistant to receive compensation allowable under a township's appropriation measure as an alternative to the amount allowable under an estimate of expenditures provided to the board of trustees.
- Allows a board of township trustees, as part of a local government deferred compensation program, to establish a designated Roth account feature or any other feature for retirement savings account contributions that are not tax-deferred.
- Permits counties, townships, and municipal corporations to regulate small solar facilities.
- Authorizes the treasurer or governing board of a subdivision that is a member of the Little Miami Joint Fire and Rescue District to invest all or part of the interim money in bonds or other obligations of the fire district of which it is a member.

* This version corrects an error in a citation to R.C. 303.213 on page 5.

- Requires that the fire district bonds or other obligations mature within 20 years.
- Exempts the treasurer or governing board from specified requirements of the Uniform Depository Act when investing the interim money in bonds or other obligations of the Little Miami Joint Fire and Rescue District.
- Allows a township to use general funds to support broadband expansion within the unincorporated territory and establishes requirements for awarding funds and administering a challenge process.

DETAILED ANALYSIS

Donating unneeded property

The act modifies the method a township follows to donate unneeded property, including vehicles, road machinery, equipment, and tools. Continuing law provides that any property exceeding \$2,500 in value must be sold by public auction or sealed bid to the highest bidder. Property valued at or below \$2,500 may either be sold directly (without a public process) or donated to an eligible nonprofit.

Specifically, the act modifies the process for donating property valued at or below \$2,500 to a nonprofit organization by eliminating all previous requirements, except two: (1) the nonprofit organization still must be a 501(a) or 501(c)(3) organization located in Ohio, and (2) the nonprofit must submit evidence of its eligibility. The act retains the option to directly sell the property.¹

Repealed procedural requirements

Under the law prior to the act, the board of trustees followed a longer process to donate the property to an eligible nonprofit. The trustees first were required to adopt a resolution stating their intent to donate unneeded property, with guidelines and procedures for doing so. The board had to post notice in the board of trustees' office, and publish notice via newspaper, via trade papers, and on the board's website. Nonprofit organizations interested in receiving donated property were required to submit written notice to the board. The notice must have included the organization's purpose, what types of property the organization needed, and the name, address, and phone number of the organization's agent. The board maintained a list of all eligible nonprofit organizations that expressed interest in receiving donated property.

The board also maintained a list of all unneeded property that the board intended to donate, which had to be posted continuously in the board of trustees' office and on its website. The board was required to donate the unneeded property to the eligible nonprofit that first declared its desire to obtain the property, or to whichever nonprofit had priority on the

¹ R.C. 505.10.

township's list of eligible organizations (trustees must have specified the reasons why the organization was given priority).

Auditor of State fraud-reporting system

Continuing law requires the Auditor of State to maintain a fraud-reporting system.² Any Ohio resident or public employee may make an anonymous complaint about fraud by a public official or public office, which the Auditor of State reviews. The act simply references the Auditor's fraud-reporting system in a provision of law related to employees reporting unlawful activity in the workplace.³ Under ongoing law, the provision lists a number of persons with whom the employee may file a complaint (e.g., the county prosecutor), but the list did not include the Auditor of State under former law.

Township redevelopment TIFs

The act expands the options available to a township that wishes to create a tax increment financing (TIF) arrangement. Under continuing law, townships may establish a TIF with the goal of funding public infrastructure improvements. Under the option authorized in the act, which was previously only available to municipalities, a township that is engaged in redevelopment activities may create a TIF and use payments in lieu of taxes ("PILOTs") received through the TIF for any project described by the township in the resolution authorizing the use of PILOTs – effectively expanding the types of projects such townships may fund using PILOTs.

TIF background

Under continuing law, townships, municipalities, and counties may create a TIF. Generally, the goal of the TIF is to finance public infrastructure improvements, e.g., roads and bridges, water and sewer lines, other utility projects, and similar improvements. Through a TIF, the subdivision grants a real property tax exemption with respect to the incremental increase in the assessed value of designated parcels that are part of a development project. The owners of the parcels make PILOTs to the subdivision equal to the taxes that would otherwise have been paid with respect to the exempted improvements. TIFs thereby create a flow of revenue back to the subdivision that created the TIF, which generally uses those PILOTs to pay the public infrastructure costs necessitated by the development project.

In addition, municipal corporations may establish a special type of TIF district, known as a "municipal redevelopment TIF," in which the municipal corporation, engaging in urban redevelopment, acquires land, leases or conveys it to another person, and exempts from taxation the improvements on the land it declares to be a public purpose. These TIFs can only extend to residential parcels if they are located in certain cities' blighted areas, i.e., areas in which at least 75% of the properties are a menace to public health and safety due to being

² R.C. 117.103, not in the act.

³ R.C. 4113.52. A similar reference appears in a provision specifically regarding civil service employees. See R.C. 124.341, not in the act.

vacant, dilapidated, contaminated, or some similar combination of factors.⁴ The PILOTs that the municipality receives can be used for any project described in the municipal TIF ordinance authorizing the use of PILOTs.

Expansion of redevelopment TIFs to townships

The act allows townships to create this latter type of TIF. The same requirements that apply to municipal redevelopment TIFs apply to townships as well: the township must have acquired the property while engaged in redevelopment, then subsequently have leased or conveyed the property to another person. Similar to the municipal redevelopment TIFs, the township TIFs may include residential improvements, provided that the property is located in a blighted area of the township. And, the township may use PILOTs for any project described in the PILOT resolution.⁵

Township deputy fiscal officer

The act allows a board of township trustees to appoint a deputy fiscal officer when the office of township fiscal officer becomes vacant. Under continuing law unchanged by the act, the board also may appoint a deputy fiscal officer when the township fiscal officer is unable to carry out the duties of office because of illness, because of entering military service, because of a court-ordered suspension, or because the fiscal officer is otherwise incapacitated or disqualified.⁶

Township fiscal officer assistant

Under the act, a township fiscal officer's assistant may receive compensation allowable under a township's appropriation measure, as an alternative to the amount allowable under an estimate of expenditures provided to the board of trustees, as under ongoing law.⁷

Roth accounts and other nontax-deferred contributions

Under continuing law, a board of township trustees may offer a local government deferred compensation plan or program to its officers and employees, under which a portion of an officer's or employee's income is deferred and invested for retirement. The act allows a board of township trustees to establish a designated Roth account feature or any other feature for retirement savings account contributions that are subject to state and federal income taxes when made, rather than tax-deferred until retirement. These features are in addition to the tax-deferred retirement savings accounts the programs can offer under state and federal law.⁸ The Ohio Public Employees Deferred Compensation Program and certain local government entities

⁴ R.C. 1.08, not in the act.

⁵ R.C. 307.204, 503.01, 505.266, 5709.41, 5709.74, 5709.75, 5709.78, and 5709.85.

⁶ R.C. 507.02.

⁷ R.C. 507.021.

⁸ R.C. 148.061(A).

that offer a local government deferred compensation program are permitted to establish Roth account and other features under continuing law.⁹

Federal law permits government deferred compensation programs to offer designated Roth account features, as well as tax-deferred features.¹⁰ Contributions to a Roth account are not tax-deferred, but earnings are not taxed if no money is distributed until at least five years after the first contribution.¹¹

Withholdings

If a board of township trustees establishes a Roth account feature or other feature for nontax-deferred contributions, the act requires federal and state income taxes to be withheld when contributions are made to the account of an officer or employee who selects this feature. That is, contributions are made on an “after-tax” basis. Continuing law requires that all other contributions an officer or employee makes under a board’s deferred compensation plan or program are tax-deferred.¹²

Small solar facility

The act authorizes counties, townships, and municipal corporations to regulate small solar facilities. For this purpose, small solar facilities means “solar panels and associated facilities with a single interconnection to the electrical grid and designed for, or capable of, operation at an aggregate capacity of less than fifty megawatts.”

Specifically, the act allows a board of county commissioners, a board of township trustees, (or the board of zoning appeals for a county or township), and the legislative authority of a municipal corporation, to regulate the location, erection, construction, reconstruction, change, alteration, maintenance, removal, use, or enlargement of any small solar facility, whether publicly or privately owned, or the use of land for that purpose.¹³

Investment of interim money

Under continuing law, the Uniform Depository Act authorizes the investments of interim deposits (money not needed for immediate use but will be needed before the end of the period of designation) by subdivisions in specified instruments. In relevant part, the law authorizes the treasurer or governing board of the subdivision to invest interim deposits in bonds of the political subdivision, if all of the following apply:

⁹ R.C. 148.04 and 148.06, not in the act.

¹⁰ 26 United States Code 402A.

¹¹ See [Retirement Topics – Designated Roth Account](#), which may be accessed by conducting a keyword “Roth account” search on the Internal Revenue Service (IRS) website: [irs.gov](https://www.irs.gov).

¹² R.C. 148.061(B).

¹³ R.C. 303.213, 519.213, and 713.081.

1. The bonds or other obligations are payable from general revenues of the political subdivision and backed by the full faith and credit of the political subdivision.
2. The bonds or other obligations are rated at the time of purchase in the three highest classifications established by at least one nationally recognized standard rating service and purchased through a registered securities broker or dealer.
3. The aggregate value of the bonds or other obligations does not exceed 20% of interim moneys available for investment at the time of purchase.
4. The treasurer or governing board is not the sole purchaser of the bonds or other obligations at original issuance.
5. The bonds or other obligations mature within ten years from the date of settlement.
6. The treasurer or governing board has completed additional training for making the investments. The type and amount of additional training must be approved by the Treasurer of State and may be conducted by or provided under the supervision of the Treasurer of State.¹⁴

The act makes an exception to the requirements above and authorizes the treasurer or governing board of a subdivision that is a member of the Little Miami Joint Fire and Rescue District to invest all or part of the interim moneys in bonds or other obligations of the fire district for which it is a member and requires that the bonds mature in 20 years, instead of the ten-year requirement under the Uniform Depository Act.¹⁵

Township broadband expansion projects

The act authorizes a board of township trustees to adopt a resolution to expend general funds to support broadband expansion projects within the township's unincorporated territory, if each project (1) is an eligible project under Ohio Residential Broadband Expansion Grant (ORBEG) Program and (2) has not been awarded a grant under that program. If the board adopts a resolution for this purpose, the board also must establish requirements and a process for awarding the funds to broadband expansion projects and for administering the challenge process described below.¹⁶

ORBEG Program definitions that apply to the act

The act specifies that certain terms in the act have the same meanings as terms defined for the ORBEG Program,¹⁷ a program under which broadband providers may apply for and be

¹⁴ R.C. 135.01 and 135.14, not in the act.

¹⁵ Section 3.

¹⁶ R.C. 505.882(B).

¹⁷ R.C. 505.882(A)(2).

awarded program grants awarded by the Broadband Expansion Program Authority to help fund broadband service access to residences as part of an “eligible project.”¹⁸

An “eligible project” is a project to provide tier two broadband service access to residences in an unserved area or tier one area of a municipal corporation or township that is eligible for funding under the ORBEG Program.¹⁹

“Program grant” is money awarded under the ORBEG Program to assist in covering certain costs for an eligible project.²⁰

“Tier two broadband service” is a retail wireline or wireless broadband service capable of delivering internet access at speeds of at least 25 Mbps downstream and at least 3 Mbps upstream.²¹

“Tier one area” is an area that has access to tier one broadband service but not tier two broadband service. “Tier one area” includes an area where construction of a network to provide tier one broadband service is in progress and is scheduled to be completed within a two-year period. “Tier one area” excludes an area where construction of a network to provide tier two broadband service is in progress and is scheduled to be completed within a two-year period. “Tier one broadband service” is retail wireline or wireless broadband service capable of delivering internet access speeds of at least 10 but less than 25 Mbps downstream and at least 1 but less than 3 Mbps upstream.²²

“Unserved area” is an area without access to tier one broadband service or tier two broadband service, but excluding an area where construction of a network to provide tier one broadband service or tier two broadband service is in progress and is scheduled to be completed within a two-year period.²³

Process for challenges to broadband expansion projects

If a board of township trustees adopts a resolution to spend general funds to support broadband expansion projects, a challenging provider may challenge the spending of township general funds for this purpose. A challenge must be in writing and must occur not later than 30 days after the resolution is passed.²⁴

A “challenging provider” is either:

¹⁸ R.C. 122.40 to 122.4077, not in the act.

¹⁹ R.C. 122.40(D), not in the act.

²⁰ R.C. 122.40(B), (E), and (G), not in the act.

²¹ R.C. 122.40(K), not in the act.

²² R.C. 122.40(J) and (L), not in the act.

²³ R.C. 122.40(M), not in the act.

²⁴ R.C. 505.882(C)(1).

- A broadband provider providing tier two broadband service within or directly adjacent to an eligible project that is a township broadband expansion project authorized as described above;
- A municipal electric utility that provides tier two broadband service to an area within the eligible project that is a township broadband expansion project authorized as described above and that is within the geographic area service by the municipal electric utility.²⁵

Challenge requirements

If a challenging provider challenges township general fund spending for broadband expansion projects, it must provide, by certified mail, a written copy of the challenge to the board of township trustees and to the broadband provider whose broadband expansion project is subject to the challenge. The copy provided to the board may include any information the challenging provider considers to be proprietary or a trade secret, but such information may be redacted from the copy of the challenge provided to the broadband provider whose broadband expansion project is subject to the challenge.²⁶

Requirements for a successful challenge

The act requires a challenging provider to provide sufficient evidence to the board of township trustees demonstrating that all or part of the broadband expansion project is ineligible. And, at a minimum, a challenge must include information providing sufficient evidence disputing that the broadband expansion project contains unserved or tier one areas.²⁷ Finally, the minimum information in a challenge must also include:

- Sufficient evidence attesting to the challenging provider's existing offering of tier two broadband service to all or part of the broadband expansion project, which must include a signed, notarized statement submitted by the challenging provider that sufficiently identifies the part of the broadband expansion project to which the challenging provider offers broadband service; or
- Sufficient evidence attesting to the challenging provider's planned offering of tier two broadband service to all or part of the broadband expansion project, which must include both:
 - A signed, notarized statement submitted by the challenging provider that sufficiently identifies the part of the broadband expansion project to which the challenging provider will offer broadband service; and

²⁵ R.C. 505.882(A)(1).

²⁶ R.C. 505.882(C)(2).

²⁷ R.C. 505.882(D).

- A summary of the construction efforts that includes the dates when tier two broadband construction is expected to be completed and when tier two broadband service will first be offered to the part of the broadband expansion project being challenged.²⁸

Allowable information to demonstrate ineligibility

A challenging provider may present shapefile data, residential addresses, maps, or similar geographic details to demonstrate that all or part of a broadband expansion project is ineligible. However, the act specifies that census block or census tract level data is not acceptable as evidence of the ineligibility of all or part of a project.²⁹

Township action regarding a challenge

If a board of township trustees receives a challenge regarding a broadband expansion project from a challenging provider, the board, not later than 30 days after receiving the challenge, may do any of the following:

- Suspend the use of general funds for broadband expansion projects that are subject to the challenge;
- Reject the challenge, approve the use of the funds, and proceed with the broadband expansion project by the broadband provider whose project was subject to the challenge;
- Accept the challenge in part, reject the challenge in part, and then approve the use of the funds for a modified broadband expansion project that includes some but not all of the locations initially proposed for the broadband expansion project.³⁰

Under the act, a decision made by a board of township trustees regarding a challenge is considered final and further challenges are prohibited. After the board makes its decision, the board must provide a copy of the decision both to the challenging provider and the broadband provider whose broadband expansion project was subject to the challenge. The copy must be provided by certified mail or electronic mail.³¹

²⁸ R.C. 505.882(D)(2).

²⁹ R.C. 505.882(E).

³⁰ R.C. 505.882(F).

³¹ R.C. 505.882(G).

HISTORY

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