Ohio Legislative Service Commission

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Fiscal Note & Local Impact Statement

Bill: H.B. 182 of the 131st G.A.
Date: May 25, 2016

Status: As Reported by Senate Ways & Means
Sponsor: Rep. Schuring

Local Impact Statement Procedure Required: No

Contents: Revises law governing joint economic development districts, enterprise zones, and Ohio's New Markets Tax Credit program, provides a property tax exemption, and makes other changes

State Fiscal Highlights

- A change in the New Markets Tax Credit (NMTC) program, potentially making additional investments eligible under the program, may increase the number of applicants for funding, possibly reducing future revenues from the financial institutions tax and insurance taxes.
- Alternatively, the change in the NMTC program may shift the mix of investments funded through the program, with no loss of state revenues.
- Any reductions in revenues from these GRF taxes will reduce transfers to the Local Government Fund (LGF, Fund 7069) and the Public Library Fund (PLF, Fund 7065), which each receive 1.66% of GRF tax revenues under permanent law. The PLF receives 1.70% during the current biennium.

Local Fiscal Highlights

- The bill modifies law governing statewide joint economic development districts (JEDDs).
- A prohibition on including residences of electors in JEDDs is eased, allowing inclusion of mixed-use developments that are part residential.
- The bill allows income of persons residing in JEDDs to be subject to the JEDD income tax, potentially increasing revenue.
- A business that operated in the unincorporated part of a JEDD prior to its creation may file for exemption from the JEDD income tax, which may increase costs of county courts of common pleas and reduce JEDD revenue.
- The bill allows investments in retail facilities in an enterprise zone to be exempt or partly exempt from property taxes, if approved by affected school boards.
- Exemption from property taxation for an intermediary in the federal Small Business Administration's microloan program will reduce revenue of Columbus schools and other local governments by about $28,000 per year.

- To the extent that a change in the New Markets Tax Credit Program made by the bill reduces GRF tax revenues, units of local government and libraries will receive less revenue from the LGF and PLF.

Detailed Fiscal Analysis

The bill revises law pertaining to statewide joint economic development districts (JEDDs), to enterprise zones, and to the New Markets Tax Credit (NMTC) program. It creates tax exemptions for Nationwide Arena in Columbus and for a nonprofit lender under the Small Business Administration's microloan program. It eases the standard for keeping contribution options on the state income tax form, and extends a deadline for municipal corporations to report information on the income taxes they charge. The discussion in this Fiscal Note focuses on changes that appear to have fiscal effects. Further details on the various changes are in the LSC Bill Analysis.

Joint economic development districts

The bill reorganizes law governing JEDDs, consolidating into Revised Code section 715.72 provisions currently in sections 715.73 through 715.78 and repealing the latter sections. Not included are JEDDs organized under restricted procedures in Revised Code sections 715.70 and 715.71, available only to certain municipal corporations and townships. Also not included are joint economic development zones organized under section 715.69. The bill makes a number of changes affecting statewide JEDDs.

JEDDs are geographic areas specified in contractual agreements between or among the contracting parties: one or more municipal corporations, one or more townships, and in some cases one or more counties. Within a JEDD, the parties seek to foster economic development, job creation or preservation, and improved economic welfare. The bill adds redevelopment to these purposes. These objectives are pursued through provision of new, expanded, or additional services, facilities, or improvements, paid for by imposition of an income tax. Revenue from the JEDD income tax may also be used for other purposes of the parties to the contract.

The bill generally continues a prohibition in current law on designation of land where electors reside as part of a JEDD, when the JEDD is created, but allows inclusion of a "mixed-use development" within the territory of a JEDD. A mixed-use development is one used for a combination of residential, commercial, and other purposes. The bill further provides that the tax base of an income tax levied by the JEDD shall include the income of persons living within the JEDD, whereas current law does not apply to incomes of individuals residing in the JEDD except to the extent that the income is earned there. These changes may increase JEDD revenue. Current law, unchanged by the bill, requires that a tax levied by a JEDD be levied on both income of persons working in the JEDD and net profits of businesses operating in the JEDD.

The bill lets contracting parties exclude from a JEDD parcels that are within JEDD boundaries. Income or net profit earned in excluded parcels is not subject to JEDD income tax. Current law does not either authorize or prohibit such exclusions. The fiscal effect of explicitly permitting such exclusions is uncertain.

The bill allows the JEDD income tax revenue to be used to carry out the district's economic development plan, provide for the long-term maintenance of the district, and "for any other lawful purpose of the contracting parties pursuant to the contract" including utility services provided by contracting parties. Current law requires JEDD income tax revenue to be used for purposes of the district and of the contracting parties. This provision appears unlikely to significantly alter use of JEDD income tax revenue.

The bill creates a procedure for an owner of a business that operated in the unincorporated part of a JEDD prior to creation of the JEDD to file a complaint with a court of common pleas for exemption from the JEDD income tax for the business and its employees. This change may increase court system costs. To be exempted, the business and employees must derive no material benefit from the services, facilities, and improvements under the economic development plan, or the material benefit must be negligible in comparison with the income tax revenue. The owner cannot apply for this exemption if the owner signed the petition consenting to the proposed JEDD. Availability of this exemption may reduce JEDD revenue.

The bill amends the term "exempt income" for municipal income tax purposes as including, in the case of an income tax administered for a JEDD, the net profits of a business operating in the JEDD that filed for and was granted exemption from the JEDD income tax, and the income of employees of that business.

The bill requires that certain costs of establishing or enlarging a JEDD be shared equally by the contracting parties.

Enterprise zones

Enterprise zones are geographic areas in which businesses may receive partial or full exemption for a specified term of years from property taxes, for eligible new investments. Municipal and county governments administer enterprise zones.

The bill allows a municipality or county seeking to establish an enterprise zone, for a place of business used mainly for making retail sales, to petition the board of education of a school district within the territory of which the place of business is located to waive the retail facilities exclusion in enterprise zone law. Under the retail facilities exclusion, an enterprise's place of business in an enterprise zone is deemed not to include any portion used for making retail sales.[1] With the waiver, the retail sales facility would become eligible for the tax exemption. This change may reduce property tax revenues from investments that increase the value of such facilities. As implied by

[1] This provision is not applicable in an impacted city, under R.C. 1728.01, because a retail facility there is not excluded from an enterprise zone.

the above explanation, the revenue loss would be permissive for an affected school district and for the municipality or county seeking to establish the enterprise zone.

Change to Ohio's New Markets Tax Credit program

The NMTC program permits investors to receive tax credits in exchange for making qualified equity investments in specialized financial intermediaries called Community Development Entities. The tax credits may be claimed against the financial institutions tax, the domestic insurance tax, and the foreign insurance tax. No credits may be claimed in the first two years after a qualifying investment, 7% of the amount of investment may be claimed as a credit in the third year, and 8% may be claimed in each of years four through seven, a total of 39%. The credits are nonrefundable but may be carried forward up to four years against tax otherwise due. In estimating the amount of qualifying investments to approve for the credits, the Director is to take no account of the potential for credits to be carried forward to later years.

The bill changes Ohio's NMTC program by ending an exclusion from the program in current law of a business deriving 15% or more of its revenue from rental or sale of real property.[2] This change may increase the amount of tax credits claimed in future years. Alternatively, it may shift the mix of entities in which funds under the program may be invested. The amount of qualifying investments on the basis of which credits may be claimed is limited to an amount, estimated by the Director of Development, such that credits each fiscal year total no more than $10 million.

A requirement for a prospective investment to qualify for Ohio's NMTC program is that it receive a tax credit from the federal program of the same name. Credits against state and federal taxes provide subsidies that assist investors and financial institutions participating in projects in those communities.

In the latest year, the full $10 million of tax credits was allocated, according to the "Round 6 Awards" posting on the Development Services Agency website.[3] As long as the financial entities awarded the credits are able to invest the full amount in qualifying businesses, the proposed change will allow additional entities to be eligible for funding under the program, but will not result in a revenue loss for the state or for units of local government and libraries. Total tax credits in all six rounds amount to $46 million, according to data provided by the Department, less than the potential $60 million with that number of rounds. Letting additional businesses be eligible for investments through the program could potentially result in larger revenue losses.

[2] A special purpose entity principally owned by a principal user of that property formed solely for the purpose of renting, either directly or indirectly, or selling real property back to such principal user is not excluded from the NMTC program under current law if the principal user does not derive 15% or more of its gross annual revenue from rental or sale of real property.

[3] This posting on the Development Services Agency website was accessed May 12, 2016.

Revenues from the financial institutions tax, the domestic insurance tax, and the foreign insurance tax accrue to the GRF. Funding for the Local Government Fund (LGF, Fund 7069) is 1.66% of GRF revenue. Funding in permanent law for the Public Library Fund (PLF, Fund 7065) is the same percentage of GRF revenue, but is 1.70% of GRF revenue during FY 2016 and FY 2017 under a provision of Am. Sub. H.B. 64 of the 131st General Assembly. If future awards of credits under Ohio's NMTC program would otherwise fall short of the $10 million limit, allowing additional entities to qualify for the program might result in additional revenue losses to the state's GRF and hence to units of local government and libraries.

Nonprofit Small Business Administration microloan lenders

The bill exempts from real property taxation, starting in tax year (TY) 2016, a qualifying property owned by a nonprofit organization that operates as an intermediary lender in the federal Small Business Administration's (SBA) microloan program. To qualify, the property must be used "primarily for small business lending, economic development, job training, entrepreneur education, or associated administrative purposes" by the nonprofit entity, according to the bill. As of May 19, 2016, the SBA listed only one such lender in Ohio, the Economic and Community Development Institute in Columbus. Other states in many cases have multiple organizations participating in the microloan program as intermediaries.

The Franklin County Auditor's website shows two parcels at the property's location with TY 2015 taxes totaling $27,856, including $19,441 to Columbus City School District and $8,415 to other units of local government. Amendment of this section (R.C. 5709.12) by the bill is effective in TY 2016 and thereafter, and revenue losses would be likely to rise in future years. If other Ohio nonprofit organizations became SBA microloan intermediaries in future years, the loss of tax revenue would also increase.

The tax exemption may affect Department of Education school subsidies for foundation aid, GRF line item 200550, but likely only by a negligible amount. The property is currently classified as commercial, so state reimbursements for property tax rollbacks, paid only for taxes on residential and agricultural real property, would be unaffected by the exemption.

The SBA's website indicates that the microloan program lends money to small business and nonprofit childcare providers. Loans may be as large as $50,000, and average $13,000. The program operates through nonprofit intermediaries based in local communities. Loans may be used for inventory, supplies, furniture, fixtures, machinery, or equipment, and may be repaid over a period of up to six years depending on the specific terms of the loan.

State individual income tax check-off

Current law permits taxpayers to contribute all or a portion of their income tax refunds for purposes listed on the tax form, by indicating the amount to be contributed. To be retained on the income tax form, each "check-off" must raise at least a stated amount within a period of time specified in statute. The bill lowers the contribution threshold from $150,000 to $50,000 per year, and extends from two years to five years the time period during which contributions must exceed the threshold in at least one year in order for a check-off to be retained on the individual income tax form. This change may allow more check-offs to stay on the income tax form than would be allowed under current law.

Municipal income tax information reporting

The bill extends from September 30 to December 31, 2016, the deadline set in H.B. 5 of the 130th General Assembly for municipal corporations to report information on the effects of recent changes to law governing municipal income tax treatment of net operating loss deductions. The information would enable computation of statewide effects by the Municipal Income Tax Net Operating Loss Review Committee.

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