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*Final Analysis*  
*Legislative Service Commission*

**Am. Sub. S.B. 265**  
123rd General Assembly  
(As Passed by the General Assembly)

**Sens. Horn, Hagan, Spada, Watts, Armbruster, Brady, Latell, Gardner**

**Reps. Krebs, Hartnett, Bender, Patton, Austria, Hollister, Van Vyven,  
Mottley, Wilson**

**Effective date:** \*

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**ACT SUMMARY**

- Requires the Director of Development to submit the annual report on enterprise zones to the General Assembly no later than the first day of August each year, and requires the Director to also send a copy of the annual report to each General Assembly member and to the Legislative Service Commission's Director.
- Adds to the list of information required in the annual report, information on terms in agreements between municipal corporations or counties and enterprises (1) that are not required by statutes and (2) that affect the revenues of a school district or cause revenue to be foregone by a school district.
- Increases the penalty assessed against municipal corporations and counties from \$500 to \$1,000 for each month in which they fail to submit an annual report concerning enterprise zone agreements to which they are a party to the Director of Development and the board of education of affected school districts.
- Transfers the oversight of community improvement corporations and development corporations from the Director of Development to the Auditor of State, including the filing of certain annual financial reports with the Auditor of State and submission to audits conducted by the Auditor of State.

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\* *The Legislative Service Commission had not received formal notification of the effective date at the time this analysis was prepared.*

- Requires community improvement corporations and development corporations to file annual financial reports that conform to the Auditor of State's rules, are prepared according to generally accepted accounting principles, and are certified by their board of trustees or by their treasurer or other chief fiscal officer, and mandates that those reports generally be filed within 120 days after the last day of the corporation's fiscal year.
- Requires community improvement corporations and development corporations to submit to audits by the Auditor of State as though they were public offices, but permits them to request under specified circumstances that the audits instead be conducted by an independent CPA.
- Permits the Auditor of State to determine that a community improvement corporation or development corporation cannot be audited and to declare it unauditale.
- Prescribes a potential penalty of cancellation of a community improvement corporation's or development corporation's articles of incorporation for failure to file an annual financial report within a prescribed time.

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## CONTENT AND OPERATION

### *Changes to the Enterprise Zone Law*

#### *Background*

An enterprise zone is a designated area within a municipal corporation or county that meets specified qualifications essentially showing that the area is economically depressed (see **COMMENT 1**). Generally speaking, once a municipal corporation's legislative authority or a board of county commissioners



designates a given area as an enterprise zone and the Director of Development certifies that that area meets the qualifications of an enterprise zone, the legislative authority or board of county commissioners may offer certain tax incentives (exemptions) or optional services or assistance to enterprises that would create or preserve employment opportunities and improve the economic climate of the area. Enterprise zones generally are under the oversight of the Department of Development (see **COMMENT 2**). (Sec. 5709.67; secs. 5709.61 to 5709.66--not in the act.)

**Annual report by the Director of Development on enterprise zones**

**Date of submission and to whom provided.** Under continuing law, the Director of Development is required to submit an annual report to the General Assembly on the state of enterprise zones in Ohio. Former law provided no specific date for the submission of this report. The act amends the Enterprise Zone Law to require the Director of Development to submit the report not later than the *first day of August* of each year. Under the act, the Director also must send a copy of the report to *each* member of the General Assembly and the Director of the Legislative Service Commission. No time is specified for that "sending." (Sec. 5709.67(B).)

**Contents.** Continuing law requires that the report contain the following information (sec. 5709.67(B)):

- (1) The cost over the past year to the state of the tax and other incentives offered to enterprises associated with enterprise zones;
- (2) The number of tax incentive qualification certificates, employee tax credit certificates, and extension of benefits certificates issued over the past year to enterprises associated with enterprise zones;
- (3) The names of the municipal corporations and counties that have entered into enterprise zone agreements with enterprises;
- (4) The number of new employees hired in enterprise zones as a result of tax and other incentives;
- (5) The Director of Development's finding as to whether the tax and other incentives have resulted in the creation of more positions in Ohio than would have been created without the incentives.

The act adds the requirement that the Director of Development also provide in the annual report information on terms in enterprise zone agreements between municipal corporations or counties, on the one hand, and enterprises, on the other hand, (1) that are not required to be included in an agreement by the Enterprise



Zone Law (see **COMMENT 3**) but that have been so included, (2) that are forwarded in writing to the Director under continuing law together with a copy of an agreement, and (3) that *concern school district revenue* (sec. 5709.67(B)(5)). Continuing law refers to these additional terms as "affecting the revenues of a city, local, or exempted village school district or causing revenue to be foregone by the district" (secs. 5709.62(H), 5709.63(H), and 5709.632(G)--not in, but referred to in, the act).

**Municipal and county annual enterprise zone reports**

**Date of submission and to whom provided.** Under continuing law, the information contained in the Director of Development's annual report on enterprise zones is compiled from reports submitted by municipal corporations and counties. Each year, every municipal corporation and county that has entered into an enterprise zone agreement must submit a report on all agreements that were in effect during the preceding calendar year to the Director of Development and to the board of education of each school district affected by an agreement. The report must be submitted no later than March 31. (Sec. 5709.68(A).)

**Contents.** The report must include the following information (sec. 5709.68(A)):

(1) The designation assigned by the Director of Development of each enterprise zone within the municipal corporation or county, the date each zone was certified, the name of each municipal corporation or township within each zone, and the total population of each zone;

(2) The number of enterprises, and the number of full-time employees, that are subject to agreements within each enterprise zone, and the rate of unemployment in the municipal corporation or country in which the zone is located for each year since the zone was certified;

(3) The number of agreements approved and executed during the calendar year for which the report is submitted, the number of agreements in effect on December 31 of the previous year, the number of agreements that expired during the calendar year for which the report is submitted, and the number of agreements scheduled to expire in the current calendar year;

(4) The number of agreements receiving compliance reviews by the tax incentive review council of the municipal corporation or county, and certain information from the results of each review;

(5) The number of enterprises subject to agreements that expanded or were established within each enterprise zone, and employee information for those enterprises;

(6) The number of enterprises subject to agreements that closed or reduced employment at any place of business in Ohio for the primary purpose of establishing, expanding, renovating, or occupying a facility, and employee information for those enterprises;

(7) For each agreement, the enterprise's employment at the project site before and after the agreement, its payroll for the previous year, the amount of taxes paid on tangible personal property and real property at the project site, and the amount of taxes that were not paid on tangible personal property and on real property at the project site because of an exemption granted under the agreement.

**Penalties for the failure of a municipal corporation or county to submit a timely or complete report.** Under continuing law, if the report is incomplete or is not submitted by March 31, the municipal corporation or county may not enter a new enterprise zone agreement until it has complied with all of the reporting requirements (sec. 5709.68(B)(1)). Under former law, beginning on the first day of each ensuing month, *for each month* of the municipal corporation's or county's noncompliance, the Director of Development was required to order the proper county auditor *to deduct \$500* from the next succeeding disbursement to the municipal corporation or county of funds derived from tax levies or assessments held in the county treasury or from the Undivided Local Government Fund. The county auditor then was required to transmit at a specified time, by warrant, the amount of the penalty for noncompliance to the Director of Development, who was required to deposit the penalty into the State Enterprise Zone Program Administration Fund. (Sec. 5709.68(B)(2) and (C).)

The act increases the amount of the penalty that must be so transmitted and deposited to *\$1,000* per month of noncompliance (sec. 5709.68(B)(2)).

### **Transfer of oversight functions to the Auditor of State**

#### **Community improvement corporations**

**Continuing and former law.** Community improvement corporations (CICs) are nonprofit corporations established "for the sole purpose of advancing, encouraging, and promoting the industrial, economic, commercial, and civic development of a community or area" (sec. 1724.01, not in the act). (See **COMMENT 4**.) Under former law, CICs had to submit an *annual report* to the Director of Development, had to submit to an audit by a certified public accountant (CPA) when required by rule of the Director to do so, and had to



submit a copy of each *CPA audit report* to the Director "when required" by the Director. A CIC annual report had to cover all financial and other transactions of the corporation for the preceding year, and each CPA audit report of a CIC had to cover the period the Director specified. The Director was required to analyze these annual reports and audit reports and to determine whether the activities of a CIC were in accordance with the CIC Law (R.C. Chapter 1724.). (Sec. 1724.05.)

If a CIC failed to make an annual report or an audit report within 90 days after the time that was prescribed by law (annual reports--January 31; audit reports--Director specified time) to the Director, the Director was required to notify the Secretary of State, who then was required to cancel the CIC's articles of incorporation (sec. 1724.06).

**Changes made by the act.** The act generally transfers oversight functions regarding CICs from the Director of Development to the Auditor of State. Additionally, it modifies the reporting requirements to which CICs are required to adhere.

Instead of the "report" that a CIC was required to annually submit under former law, the act specifically requires each CIC to prepare an *annual financial report* that (1) conforms to rules prescribed by the Auditor of State, (2) is prepared according to generally accepted accounting principles (GAAP), and (3) is certified by the CIC's board of trustees or its treasurer or other chief fiscal officer. The financial report must be filed with the Auditor of State within 120 days after the last day of the CIC's fiscal year, unless the Auditor of State extends that deadline. The Auditor of State is permitted to establish terms and conditions for granting any extensions of the deadline. (Sec. 1724.05.)

Each CIC must submit to *audits by the Auditor of State*, the scope and frequency of which must be in accordance with the law for conducting audits of public offices (sec. 117.11, not in, but referred to in, the act). A CIC, however, may request the performance of those audits by an independent CPA, (1) as if the CIC is a public office and (2) if the Auditor of State has adopted rules permitting a public office (other than a state agency) to request that required audits instead be performed by, and that the public office be permitted to participate in the selection of, an independent CPA (sec. 115.56, not in, but referred to in, the act). (Sec. 1724.05.)

The Auditor of State is authorized to receive and file the required annual financial reports and the reports of all required audits. The Auditor of State then must analyze those reports to determine if the activities of the CIC involved are in accordance with the CIC Law. (Sec. 1724.05.)



If any CIC fails to prepare a required annual financial report and to file that report with the Auditor of State within 90 days of the time prescribed for that filing, or if any CIC fails to prepare an annual financial report and to file that report with the Auditor of State within 90 days of a declaration by the Auditor of State that the CIC cannot be audited because its accounts, records, files, or reports have been improperly maintained (i.e., it is "unauditable") (sec. 117.41, not in, but referred to in, the act), the Auditor of State must notify the Secretary of State, who then must cancel the CIC's articles of incorporation (sec. 1724.06).

The act also technically revises the affected provisions of the CIC Law (secs. 1724.05 and 1724.06).

### **Development corporations**

**Continuing and former law.** A development corporation is a for-profit corporation formed for the purpose of promoting industry and business ventures in the state (secs. 1726.01 and 1726.02, not in the act). (See **COMMENT 5**.) Under former law, a development corporation was required to submit an annual report *together with* a report of an audit by a CPA to the Director of Development before January 31. These reports had to cover all financial and other transactions of the development corporation for the preceding year. The Director was required to analyze these reports and determine whether the activities of the development corporation were in accordance with the Development Corporation Law (R.C. Chapter 1726.). (Sec. 1726.11.)

If a development corporation failed to submit these reports "together" within 90 days after the time prescribed by law (January 31), or if a report disclosed that the development corporation had failed to begin business for a period of three years from the effective date of the filing of its articles of incorporation, the Director was required to notify the Secretary of State, who then was required to cancel the development corporation's articles (sec. 1726.12).

**Changes made by the act.** The act generally transfers oversight functions regarding development corporations from the Director of Development to the Auditor of State. Additionally, it modifies the reporting requirements to which development corporations are required to adhere.

Instead of the joint submission of an annual report and an audit report that a development corporation was required to make by January 31 under former law, the act requires each development corporation to prepare an *annual financial report* that (1) conforms to rules prescribed by the Auditor of State, (2) is prepared according to generally accepted accounting principles (GAAP), and (3) is certified by the corporation's board of trustees or its treasurer or other chief fiscal officer. The financial report must be filed with the Auditor of State within 120 days after



the last day of the development corporation's fiscal year, unless the Auditor of State extends that deadline. The Auditor of State is permitted to establish terms and conditions for granting any extensions of the deadline. (Sec. 1726.11.)

Each development corporation must submit to *audits by the Auditor of State*, the scope and frequency of which must be in accordance with the law for conducting audits of public offices. A development corporation, however, may request the performance of those audits by an independent CPA (1) as if the corporation is a public office and (2) if the Auditor of State has adopted rules permitting a public office (other than a state agency) to request that required audits instead be performed by, and that the public office be permitted to participate in the selection of, an independent CPA. (Sec. 1726.11.)

The Auditor of State is authorized to receive and file the required annual financial reports and the reports of all required audits. The Auditor of State then must analyze those reports to determine if the activities of the development corporation involved are in accordance with the Development Corporation Law. (Sec. 1726.11.)

If any development corporation fails to prepare a required annual financial report and to file that report with the Auditor of State within 90 days of the time prescribed for that filing, or if any development corporation fails to prepare an annual financial report and to file that report with the Auditor of State within 90 days of a declaration by the Auditor of State that the corporation is "unauditable" as described previously, or if any annual financial report discloses that any development corporation has failed to begin business within three years after the filing of its articles of incorporation, the Auditor of State must notify the Secretary of State, who then must cancel the development corporation's articles of incorporation (sec. 1726.12).

The act also technically revises the affected provisions of the Development Corporation Law (secs. 1726.11 and 1726.12).

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## COMMENT

1. Continuing law defines an "enterprise zone" as any of the following (sec. 5709.61(A)--not in the act):

(a) An area with a single continuous boundary that is designated in a specified manner by the legislative authority of certain types of municipal corporations or by a board of county commissioners (see related sections 5709.62 and 5709.63, not in the act) and that is certified by the Director of Development as having a population of at least 4,000 according to the best and most recent data available to the Director and having at least two of the following characteristics:



- It is located in a municipal corporation defined by the United States Office of Management and Budget as a central city of a metropolitan statistical area.
- It is located in a county designated as being in the "Appalachian region" under the Appalachian Regional Development Act of 1965.
- Its average rate of unemployment, during the most recent 12-month period for which data are available, is equal to at least 125% of the average rate of unemployment for Ohio for the same period.
- There is a prevalence of commercial or industrial structures in the area that are vacant or demolished, or are vacant; the taxes charged on them are delinquent; and certification of the area as an enterprise zone would likely result in the reduction of the rate of vacant or demolished structures or the rate of tax delinquency in the area.
- The population of all census tracts in the area, according to the 1990 federal census, decreased by at least 10% between 1970 and 1990.
- At least 51% of the residents of the area have incomes of less than 80% of the median income of residents of the municipal corporation or municipal corporations in which the area is located, as determined in the same manner specified under Section 119(b) of the Housing and Community Development Act of 1974.
- The area contains structures previously used for industrial purposes but currently not so used due to age, obsolescence, deterioration, relocation of the former occupant's operations, or cessation of operations resulting from unfavorable economic conditions either generally or in a specific economic sector.
- It is located within one or more adjacent city, local, or exempted village school districts, the income-



weighted tax capacity of each of which is less than 70% of the average of the income-weighted tax capacity of all city, local, or exempted village school districts in Ohio according to the most recent data available to the Director from the Department of Taxation.

(b) An area with a single continuous boundary that is designated in a specified manner by a board of county commissioners and that is certified by the Director of Development as (i) being located within a county that contains a population of 300,000 or less, (ii) having a population of at least 100,000 according to the best and most recent data available to the Director, and (iii) having at least two of the characteristics (other than the "central city" characteristic) listed above (see related section 5709.63, not in the act).

(c) An area with a single continuous boundary that is designated in a specified manner by a legislative authority of a specified type of municipal corporation and that is certified by the Director of Development as having a population of at least 4,000, or an area with a single continuous boundary that is designated in a specified manner by a board of county commissioners and that is certified as having a population of at least 1,000, according to the best and most recent data available to the Director (see related section 5709.632, not in the act).

2. Section 5709.67(A) generally requires the Director of Development (a) to administer the Enterprise Zone Law, (b) to adopt rules necessary to ensure that no zone is certified or remains certified unless it meets the applicable requirements listed in **COMMENT 1** above, and (c) to perform other specified functions. The Tax Commissioner, however, must administer certain tax incentives provided under the Enterprise Zone Law and must adopt rules necessary to carry out that duty. Finally, the Director of Job and Family Services must administer a particular tax incentive under the Enterprise Zone Law and must adopt rules necessary to carry out that duty.

3. The Enterprise Zone Law requires that each agreement entered into between a municipal corporation or county, on the one hand, and an enterprise, on the other hand, be in writing and include specified information and statements listed in section 5709.631 (not in the act).

4. Some of the activities that a community improvement corporation is authorized to undertake include the following (sec. 1724.02, not in the act):

(a) Borrowing money for the purposes of the corporation and issuing bonds, debentures, notes, or

other evidences of indebtedness, whether secured or unsecured;

(b) Making loans to any person or business entity, provided that the CIC does not approve a loan unless the loan applicant has been refused a loan by at least one bank or other financial institution;

(c) Purchasing, leasing, or transferring real property;

(d) Acquiring the good will, business rights, real or personal property, or other assets of any person or business entity, or assuming the obligations, debts, or liabilities of any person or business entity;

(e) Acquiring shares or other securities in any person or business entity, and exercising all associated powers of ownership.

5. The activities that a development corporation is authorized to undertake include, among others, activities similar to those listed in **COMMENT 4** above with respect to CICs (sec. 1726.04, not in the act).

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## HISTORY

| ACTION   | DATE     | JOURNAL ENTRY |
|--|----------|---------------|
| Introduced<br>Reported, S. Economic<br>Development, Technology,<br>& Aerospace | 03-14-00 | p. 1447       |
| Passed Senate (33-0)<br>Reported, H. Economic<br>Development & Small Business  | 05-17-00 | p. 1728       |
| Passed House (96-0)  | 05-23-00 | pp. 1780-1781 |
| Concurrence (32-0)   | 09-20-00 | p. 2279       |
|  | 11-08-00 | pp. 2307-2308 |
|  | 11-09-00 | pp. 2199-2200 |

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