



**Sub. H.B. 427\***

125th General Assembly  
(As Passed by the General Assembly)

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**Effective date: Emergency, June 9, 2004**

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**ACT SUMMARY**

- Subject to school board approval, increases from ten to 15 years the period for which enterprise zone agreements or urban jobs and enterprise zone agreements may exempt real and tangible personal property from taxation and may require the provision of governmental services or assistance to project sites.
- Requires an enterprise zone agreement to contain a clause requiring the business to repay the amount of forgone property taxes if, during any three-year period, the business fails to create or retain at least 75% of the number of employee positions estimated to be created or retained under the agreement during that period.
- Addresses the priority of multiple tax exemptions under tax increment financing and related economic development programs, and also enforcement, reporting, and other issues concerning those programs.
- Establishes a mechanism for reimbursing counties for a portion of forgone property tax revenue when a municipal corporation or township

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\* See the Legislative Service Commission's Fiscal Note for Sub. H.B. 427 for a detailed discussion of the act's appropriation provisions.

creates an incentive district and applies for tax exemptions on behalf of property owners located within the incentive district.

- Authorizes a municipal corporation or township to enter into an agreement with a county providing an alternative arrangement to the reimbursement mechanism, which may provide for payments to the county by the municipal corporation or township.
- Establishes an identical mechanism to reimburse townships for a portion of forgone revenue resulting from a county incentive district.
- If a municipal corporation, county, or township intends to create an incentive district and apply for an exemption from taxation on behalf of property owners, requires notification to property owners located within the proposed incentive district and a public hearing.
- With respect to county incentive districts, requires notification of townships in which a proposed incentive district will be located if the county intends to apply for an exemption from taxation on behalf of property owners located within the proposed incentive district.
- Broadens the definition of "brownfield" for purposes of the Clean Ohio Brownfield Revitalization Program.
- Establishes a lien for a moldbuilder in the plastic or metal-forming industries.
- Establishes a minimum population requirement for a single county to be considered a "local area" under the workforce development system.
- Establishes the Industrial Site Improvement Program under which the Director of Development is authorized to provide grants of up to \$1 million to eligible counties for the purpose of improving commercial or industrial areas.
- Requires an eligible county applying for a grant under the Industrial Site Improvement Program to specify how the grant will create new jobs or preserve existing jobs and employment opportunities in the county.
- Appropriates \$5 million for the Industrial Site Improvement program.



- Modifies the law authorizing payments to municipalities and counties that attract federal jobs.
- Prevents the repeal of the Employee Ownership Assistance Program that was to take effect December 31, 2004.
- Makes an appropriation of \$25.8 million to the Department of Development from the Job Development Initiatives Fund for Investment in Training Expansion, the Worker Guarantee Program, and Wright Operating Grants.
- Authorizes the conveyance of state-owned real estate in Hamilton County to the Board of County Commissioners of Hamilton County.

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## CONTENT AND OPERATION

### *Background of enterprise zones and urban jobs and enterprise zones*

(R.C. 5709.61 to 5709.69, 5709.82, and 5709.83)

Under continuing law, the legislative authority of a municipal corporation or a board of county commissioners may designate enterprise zones, or a board of county commissioners may designate urban jobs and enterprise zones, in which businesses' project sites that are newly constructed, expanded, renovated, occupied, reopened (pertaining only to a large manufacturing facility), or environmentally remediated may qualify for property tax exemptions and other incentives to encourage job growth or retention. The incentives that may be offered by either of those subdivisions to businesses in an enterprise zone include the following:

--Real and tangible personal property tax exemptions. Formerly, the exemptions would be for up to ten years, or up to 15 years if the project involved the enrichment and commercialization of uranium or uranium products or research and development activities related to that enrichment or commercialization **and** either the project included a fixed asset investment of at least \$100 million or the Director of Development determined there were extraordinary circumstances (hereinafter "uranium enrichment and commercialization project").

--Exclusion of non-retail real or tangible personal property in determining a business's value for corporation franchise tax purposes or in determining the extent to which its income is taxed by Ohio for corporation franchise or personal income tax purposes.

--Governmental services or assistance. Formerly, the services or assistance could be provided by the subdivision for up to ten years, or up to 15 years for a uranium enrichment and commercialization project.

Property tax exemptions or other incentives granted to a business must be set forth in a written agreement. Continuing law establishes the format of the agreement, which must contain certain information and statements, including a



business's proposed investment in buildings, equipment, and inventory; the estimated number of employees to be hired or retained and the payroll for them; and conditions under which incentives may be revoked.

A school board within the territory of which a project site is or will be located must be notified of any property tax exemption before the agreement is approved by the subdivision, unless the school board, in writing, has waived its right to be notified. Generally, school board approval is required for any property tax exemption that exempts more than 75% of the increased property value resulting from the agreement (in unincorporated areas, the threshold is 60%). Prior approval of a school board also is required for tax exemptions that are granted for more than ten years, but not exceeding 15 years, for a uranium enrichment and commercialization project.

The subdivision or business that enters into an enterprise zone or urban jobs and enterprise zone agreement may be required to compensate a school district for the property tax revenue forgone because of a tax exemption. If an enterprise zone is located in a municipal corporation that imposes an income tax, and the annual payroll of new employees at a project site is \$1 million or more, the school board must be compensated for at least a portion of forgone property taxes or agree to forgo compensation.

### **Enterprise zones under the act**

#### **Increase in length of exemptions and provision of governmental services**

(R.C. 5709.62 and 5709.63)

The act increases to 15 years the period for which tax exemptions may be granted under an enterprise zone agreement, and also increases to 15 years the period for which a subdivision may agree to provide governmental services or assistance to a project site. The act retains the requirement that school board approval must be obtained for any tax exemptions granted, or governmental services or assistance provided, for more than ten years, but not in excess of 15 years. In other words, a tax exemption or governmental service may be granted for between ten and 15 years, but only with the approval of the school board.

Moreover, the act applies the extended time period to all types of project sites, not just those that involve uranium enrichment and commercialization projects. In doing so, the act eliminates the \$100 million fixed asset investment trigger and the extraordinary circumstances requirement to which uranium-related projects currently are subject.

**Increased period is reflected in the agreement**

(R.C. 5709.631(B)(2))

As part of the statements incorporated into an enterprise zone agreement, former law required that the agreement contain a clause stating that "in no instance shall any tangible personal property be exempted from taxation for more than ten return years unless the project that is part of the agreement involves the enrichment and commercialization of uranium, . . . in which case the tangible personal property may be exempted from taxation for up to fifteen return years."

The act requires that the agreement contain a modified version of this statement conveying that in no instance may tangible personal property be exempted from taxation for more than ten return years, unless the school board approves exemption for a number of years in excess of ten, in which case the property may be exempted for that number of years, not to exceed 15 return years.

**Failing to meet job creation or retention goals under the agreement**

(R.C. 5709.631(B)(7) and (12))

The act requires an enterprise zone agreement to contain a clause requiring the business to repay the amount of forgone property taxes if, during any three-year period, the business fails to create or retain at least 75% of the number of employee positions estimated to be created or retained under the agreement during that period. Additionally, the clause must state that the subdivision also may terminate or modify the exemptions from taxation granted under the agreement.

**Principal city conforming change**

(R.C. 5709.62(A) and 5709.632(A))

Under continuing law, one of the conditions a municipal corporation can meet in order to be eligible to create an enterprise zone is to be the principal city of a metropolitan statistical area as defined by the United States Office of Management and Budget (R.C. 5709.61(A)(1)(a), not in the act). Prior to the enactment of H.B. 127 of the 125th General Assembly, the term "central city" was used in this definition. The act makes two conforming changes to the Enterprise Zone Law in recognition of this change.

## **Tax increment financing and related economic development programs**

### **Background**

Tax increment financing (TIF) is an economic development tool that enables municipal corporations, townships, and counties to apply the increase in taxes resulting from an increase in the assessed value of a developed parcel of land toward payment of public improvements that directly benefit that parcel. To create a TIF, the governmental authority (1) designates a parcel as exempt from taxation on the increased valuation due to improvements for a specified period of time, (2) generally requires the owner of the parcel to make service payments in the amount of the exempted taxes, and (3) applies those service payments towards financing public improvements that benefit the parcel.

A municipal corporation, township, or county may also designate an area of land as an incentive district rather than designating individual parcels. In order to create an incentive district, a municipal corporation, township, or county must pass an ordinance (in the case of municipal corporations) or a resolution (in the case of counties and townships) that specifies the borders of the incentive district. Some percentage of the increase in valuation on parcels within the area is exempt from property taxation. The governmental authority may charge the owner a service payment in lieu of the exempted taxes, and must use those payments to help finance the improvements that benefit the incentive district. (R.C. 5709.40 to 5709.43, 5709.73 to 5709.75, and 5709.77 to 5709.81.)

Under an urban renewal program (R.C. Chapter 725.), municipal corporations may enter into development agreements with property owners in "slum areas" or "blight areas" that have been designated by the municipal corporation as appropriate for an urban renewal project. The agreement exempts improvements to the property from taxation and binds owners of the improvements to make service payments in lieu of taxes upon the improvements during the exemption period. Similarly, the Community Redevelopment Corporations Law (R.C. Chapter 1728.) authorizes municipal corporations to enter into financial agreements with "community urban redevelopment corporations" for the redevelopment of blighted areas. The corporations pay service charges in lieu of taxes on the real property of the corporation or improvements made by the corporation in the project area.

### **Attachment of liens**

(R.C. 5709.91)

Under continuing law, a lien of the state for real estate taxes attaches annually to all real property subject to those taxes and continues until the taxes are



paid (R.C. 323.11, not in the act). The act provides that service payments in lieu of taxes required under an urban renewal or TIF program, and service charges in lieu of taxes required under a community redevelopment program, are to be treated in the same manner as taxes for all purposes of that lien, including but not limited to, the priority and enforcement of the lien and the collection of the service payments or charges secured by the lien.

**Filing of applications for exemption; priority of exemptions; notice**

(R.C. 5709.911)

The act states that a municipal corporation, township, or county that has enacted an ordinance or resolution under a TIF program or that has entered into an agreement under an urban renewal program or community redevelopment program may file an application for exemption under those programs in the same manner as other real property tax exemptions, "notwithstanding the indication in division (A) of section 5715.27 of the Revised Code that the owner of the property may file the application."<sup>1</sup>

Except as provided below, if an application for exemption under an urban renewal program, community redevelopment program, or TIF program is filed by a municipal corporation, township, or county *and* more than one real property tax exemption applies by law to the property or a portion of the property, both of the following apply:

- (1) An exemption granted under any of those programs is subordinate to an exemption with respect to the property or portion of the property granted under any other provision of the Revised Code.
- (2) Neither service payments nor service charges in lieu of taxes can be required with respect to the property or portion of the property that is exempt from real property taxes under that other provision of the Revised Code during the effective period of the exemption.

If the application for exemption under an urban renewal program, community redevelopment program, or TIF program is filed by the owner of the property or by a municipal corporation, township, or county with the owner's written consent attached to the application, *and* if more than one real property tax

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<sup>1</sup> R.C. 5715.27(A) states that *except as provided in the Community Reinvestment Area Law, "the owner of any property may file an application with the tax commissioner, on forms prescribed by the commissioner, requesting that such property be exempted from taxation and that taxes and penalties be remitted as provided in" the Property Tax Administration Law.*

exemption applies by law to the property or a portion of the property, no other exemption can be granted for the portion of the property already exempt under those programs unless the municipal corporation, township, or county that enacted the authorizing ordinance or resolution for the earlier exemption provides its duly authorized written consent to the subsequent exemption by means of a duly enacted ordinance or resolution. After the Tax Commissioner has approved or partially approved an application for exemption filed by or with the consent of the property owner, the municipal corporation, township, county, or property owner is required by the act to file a notice with the county recorder for the county in which the property is located that clearly identifies the property and the owner of the property and states that the property, regardless of future use or ownership, remains liable for any service payments or service charges required by the exemption until the terms of the exemption have been satisfied, *unless* the municipal corporation, township, or county consents to the subsequent exemption and relinquishes its right to collect the service payments or service charges as provided above.

If the application for exemption under an urban renewal program, community redevelopment program, or TIF program is filed by a municipal corporation, township, or county and approved by the Tax Commissioner, if the owner of the property subsequently provides written consent to the exemption and the consent is filed with the Commissioner, *and* if more than one real property tax exemption applies by law to the property or a portion of the property, no other exemption can be granted for the portion of the property already exempt under those programs unless the municipal corporation, township, or county that enacted the authorizing ordinance or resolution for the earlier exemption provides its duly authorized written consent to the subsequent exemption by means of a duly enacted ordinance or resolution. If a property owner subsequently provides written consent to an exemption as described above, the act requires the municipal corporation, township, county, or property owner to file notice with the county recorder for the county in which the property is located that clearly identifies the property and the owner of the property and states that the property, regardless of future use or ownership, remains liable for any service payments or service charges required by the exemption until the terms of the exemption have been satisfied, *unless* the municipal corporation, township, or county consents to the subsequent exemption and relinquishes its right to collect the service payments or service charges as provided above.

The county recorder's office is required by the act to charge a fee of \$14 to record either of these notices, the proceeds of which are to be retained by the county. Upon filing of the notice with the county recorder, the above provisions are binding on all future owners of the property or portion of the property, regardless of how the property is used. Failure to file the notice relieves future



owners of the property from the obligation to make service payments in lieu of taxes under an urban renewal or TIF program or service charges in lieu of taxes under a community redevelopment program, if the property or a portion of the property later qualifies for exemption under any other provision of the Revised Code. The act states that failure to file the notice does not relieve the owner of the property, at the time the application for exemption is filed, from making those payments or charges.

**Re-filing of applications for exemptions; application of act**

(Section 10)

The act states that it applies to applications for exemption that are pending on, or are filed on or after, the act's effective date. Any application for exemption under an urban renewal program, community redevelopment program, or TIF program that was approved prior to the act's effective date is to be considered to have been granted subject to the limitations set forth in the act. These applications may, but are not required to, be re-filed with the Tax Commissioner within 90 days after the act's effective date, although the failure to re-file an application does not affect the continuing validity of the exemption.

The Tax Commissioner is required to expeditiously approve a re-filed application in accordance with the act. The Commissioner's review of these applications is to be ministerial and must have the same effect and effective date as the original approval, subject to the act's provisions.

If an application for exemption under an urban renewal program, community redevelopment program, or TIF program was filed by the owner of the property and approved prior to the act's effective date, the municipal corporation, township, county, or current owner of the property may file the notice described above with the county recorder. Upon filing of that notice, the property remains liable for any service payments or charges required by the exemption until the terms of the exemption have been satisfied, unless the municipal corporation, township, or county consents to a subsequent exemption and relinquishes its right to collect the service payments or charges as provided above.

**Rulemaking by the Tax Commissioner**

(R.C. 5709.912)

The act authorizes the Tax Commissioner to adopt rules to implement the above-described sections (R.C. 5709.91 and 5709.911) of the act.

**Reimbursement of county taxes after creation of incentive district**

(R.C. 5709.42, 5709.74, and 5709.913)

The act establishes a mechanism for reimbursing the county in which a municipal or township incentive district is located for a portion of the property tax revenue forgone by the county as a result of the establishment of the district. First, the act specifies that a parcel of property located within the incentive district is subject to the reimbursement mechanism if the municipal corporation or township that established the incentive district applied for an exemption from taxation with the Department of Taxation on behalf of the property owner (see, "**Filing of applications for exemption; priority of exemption; notice**" above). The act requires the Tax Commissioner to notify the county auditor when a municipal corporation or township has applied for a tax exemption on behalf of such a property owner and the exemption has been granted.

Secondly, the act requires the county auditor in the county to perform a calculation to determine the amount of the reimbursement to the county. Under the act, each time a county auditor's sexennial reappraisal or triennial update of the assessed value of a parcel of real property subject to the reimbursement mechanism results in an increase in the assessed value, the county auditor must determine the following amounts:

(1) The amount of the increase in assessed value that is attributable to the base real property. Under the act, "base real property" is defined to mean the land, structures, and buildings, or portions of structures and buildings, that existed, and in the condition in which they existed, for the tax year in which the ordinance or resolution creating the incentive district was adopted, as reflected in the exempt tax list or the general tax list and duplicate of real and public utility property.

(2) The county auditor then must multiply the amount determined under #1 by the tax abatement percentage granted under the ordinance or resolution creating the incentive district.

(3) Next, the county auditor must take the product of the calculation made under #2 multiplied by the rate of taxes levied by the county within the ten-mill limitation for the county general fund.

(4) Finally, the auditor must take the product of the calculation made in #3 and multiply it by one-half.

Under the act, in any tax year, when a property owner is required to make service payments in lieu of taxes, a portion of the total amount of payments made for the year equal to the amount calculated under number #4 above must be



distributed to the county treasury to the credit of the county general fund instead of to the municipal or township fund set up to receive service payments in lieu of taxes. The act specifies that if service payments for the tax year are paid in two installments, the amount paid to the county must be made in two installments.

As an illustration of how the reimbursement process operates, assume that a municipal corporation establishes an incentive district, exempting the value of improvements to property located in the district from 50% of applicable property taxes. The amounts exempt from taxation are required to be paid as service payments in lieu of taxes into a fund established by the municipal corporation. The county in which the municipal corporation is located levies property taxes for its general fund inside the ten mill limitation at a rate of 4 mills. At the time the incentive district is created, Parcel A is undeveloped and has an assessed value of \$10,000. This property as it existed at the time of the creation of the incentive district is the "base real property." After the establishment of the incentive district, improvements in the form of a building are made to Parcel A increasing its assessed value to \$25,000. At the next sexennial reappraisal of Parcel A, the assessed value increases by \$10,000 to a total assessed value of \$35,000. The county auditor determines that \$2,000 of the \$10,000 increase in assessed value is attributable to the "base real property" (calculation #1, above). The \$2,000 increase attributable to the base real property is multiplied by the amount of property tax exemptions applicable as a result of the establishment of the incentive district, 50%, for a product of \$1,000 (calculation #2, above). The product of that calculation is multiplied by the county tax rate, \$1,000 times .004 (calculation #3, above), for a product of \$4. Finally, the \$4 is then multiplied by one-half for a product of \$2 (calculation #4, above). The \$2 is what the act requires to be paid to the county general fund annually in each tax year that the property owner is required to make service payments in lieu of taxes.

**Alternate agreements in lieu of county reimbursement mechanism.** The act provides that the county reimbursement mechanism described above does not apply if the municipal corporation or township enters into an agreement with the county that provides an alternative arrangement. The alternative may provide for payments to the county by the municipal corporation or township. Upon entering into such an agreement, the municipal corporation or township must provide written notice of it to the county auditor of the county that is a party to the agreement and to the Tax Commissioner.

**Exemption from reimbursement mechanism** (Section 12). Under the act, the county reimbursement mechanism does not apply with respect to a parcel of real property to which all of the following apply:

(1) The parcel is located in an incentive district created by a municipal corporation before the effective date of the act;



(2) Not less than 90% of the area comprising the incentive district is or will be devoted exclusively for residential use; and

(3) Prior to the creation of the incentive district in which the parcel is located but not earlier than 1999, the land comprising the district was valued for real property tax purposes at its current agricultural use valuation.

**Reimbursement of township taxes after creation of incentive district**

(R.C. 5709.79 and 5709.914)

The act also establishes a mechanism for reimbursing a township in which a county incentive district is created. The calculation of the amount to be reimbursed to a township and the reimbursement procedures are structured in an identical manner as the reimbursement calculations and procedures applicable to counties discussed above.

The act provides that the township reimbursement mechanism does not apply if the county enters into an agreement with the township that provides an alternative arrangement. The alternative may provide for payments to the township by the county. Upon entering into such an agreement the board of county commissioners must provide written notice of it to the county auditor of the county and to the Tax Commissioner.

**Notification and hearing concerning the creation of certain incentive districts**

(R.C. 5709.40, 5709.73, and 5709.78; Section 13)

Under continuing law, the legislative authority of a municipal corporation may enact an ordinance establishing an incentive district. The act requires that not later than 30 days prior to enacting the ordinance, if the municipal corporation intends to apply for exemptions from taxation with the Tax Commissioner on behalf of owners of real property located within the incentive district, the legislative authority of the municipal corporation must conduct a public hearing on the proposed ordinance. Not later than 30 days prior to the public hearing, the legislative authority must give notice of the public hearing and the proposed ordinance by first class mail to every real property owner whose property is located within the boundaries of the proposed incentive district.

The act also requires substantially identical notice and hearing procedures with respect to incentive districts created by townships and counties, except with respect to counties notice also must be provided to clerks of townships in which the proposed incentive district is to be located.



The act specifies that these notification and hearing requirements do not apply to any ordinance or resolution establishing an incentive district that was enacted or adopted prior to the effective date of the act.

**Definition of "improvement"**

(R.C. 5709.40, 5709.73, and 5709.77)

For purposes of the law related to municipal tax increment financing, "improvement" is defined, in part, to mean the increase in the assessed value of a *parcel of real property* that would first appear on the tax list and duplicate of real and public utility property after the effective date of an ordinance establishing the TIF were it not for the exemption granted by that ordinance. The act alters the definition so that it instead refers to the increase in *the assessed value of any real property*, not the increase in the *assessed value of a parcel of real property*.

Similarly, the law related to township and county tax increment financing defines "improvement," in part, to mean the increase in the true value of a *parcel of real property* that would first appear on the tax list and duplicate of real and public utility property after the effective date of a resolution establishing the TIF were it not for the exemption granted by that resolution. The act alters the definition so that it instead refers to the increase in the *true value of real property*, not the increase in the *true value of a parcel of real property*.

**TIF reporting requirements for townships**

(R.C. 5709.73)

Law generally unchanged by the act requires townships that have adopted a resolution establishing a TIF program to submit an annual status report to the Director of Development. The report must provide, among other things, a quantitative summary of changes in employment and private investment resulting from each project.

The act removes the requirement that the status report include changes in employment.

**Clean Ohio Brownfield Revitalization Program**

(R.C. 122.65)

Under the Clean Ohio Brownfield Revitalization Program (R.C. 122.65 to 122.659), grants and loans are provided from the Clean Ohio Revitalization Fund for brownfield cleanup or remediation projects. Law largely unchanged by the act defines "brownfield" for purposes of the program as an abandoned, idled, or



under-used industrial or commercial property where expansion or redevelopment is complicated by known or potential releases of hazardous substances or petroleum. The act expands the definition to include institutional, as well as industrial or commercial, property that meets that description. "Institutional property" is defined as property currently or formerly owned or controlled by the state that is or was used for a public or charitable purpose. "Institutional property" does not, however, mean property that is or was used for educational purposes.

### **Molder's liens**

#### **Background**

(R.C. 1333.31, not in the act)

Under continuing law, a molder<sup>2</sup> has a lien on a die, mold, pattern, or form that is in the molder's possession and that belongs to a customer, for the following:

- (1) The amount due from the customer for plastic, metal, paper, china, ceramic, glass, or rubber fabrication work performed with the die, mold, pattern, or form, or for making or improving the die, mold, pattern, or form;
- (2) The cost associated with the notice required under the law;
- (3) Costs and interest awarded in a judgment.

The molder's lien law specifies possession rights, notification requirements, methods of enforcement, priority of liens, and requirements regarding the sale of a die, mold, pattern, or form that is the subject of a lien.

#### **New moldbuilder's lien**

(R.C. 1333.32)

The act establishes a new, separate moldbuilder's lien, and for that purpose defines the subsequent terms as follows:

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<sup>2</sup> A "molder" is defined as "any person, including, but not limited to, a tool or die maker, who does either of the following:

- (1) Fabricates, casts, or otherwise makes, or improves, a die, mold, pattern, or form to produce plastic, metal, paper, china, ceramic, glass, or rubber products;
- (2) Uses a die, mold, pattern, or form to manufacture, assemble, or otherwise make a plastic, metal, paper, china, ceramic, glass, or rubber product." (R.C. 1333.29(A).)

(1) "Customer" means a person that causes a moldbuilder to fabricate, cut, cast, or design molds;

(2) "Mold" means molds, dies, forms, tools, and parts, for the plastic industry or for the metal forming industry;

(3) "Moldbuilder" means a person, including but not limited to, a model maker, patternmaker, die maker, jig and fixture builder, die sinker, mold designer, mold programmer, and mold engineer, that fabricates, cuts, casts, or designs molds for the plastic industry or for the metal forming industry, and does not include a person similarly described as a "molder" for purposes of the molder's lien law (R.C. 1333.31), unless the person also engages in the activities described in the act's definition of moldbuilder.

(4) "Molder" has the same definition as in the molder's lien law, except that it does not include a moldbuilder.

(5) "Person" means an individual, firm, partnership, association, corporation, limited liability company, or other legal entity.

**Moldbuilder's lien on molds**

(R.C. 1333.33)

Under the act, a moldbuilder has a lien on all molds produced by the moldbuilder and on all proceeds from the assignment, sale, transfer, exchange, or other disposition of the molds produced by the moldbuilder until the moldbuilder is paid in full all amounts due the moldbuilder for the production of the mold or these proceeds. The lien attaches when the mold is delivered from the moldbuilder to the customer.

The act specifies that the amount of the lien is the amount that a customer or molder owes the moldbuilder for the fabrication, repair, or modification of the mold. Under the act, the moldbuilder retains the lien even if the moldbuilder is not in possession of the mold for which the lien is claimed.

**Perfecting and priority of moldbuilder's liens**

(R.C. 1333.33)

To perfect a lien, the act requires a moldbuilder to file a financing statement in accordance with the requirements of the Secured Transactions Law (R.C. Chapter 1309.). The act specifies that this filing constitutes constructive notice of the lien.

A perfected lien remains valid under the act until all of the following occur:

- (1) The moldbuilder receives the full amount due for the mold;
- (2) The customer receives a verified statement from the molder that the molder has paid the amount for which the lien is claimed;
- (3) The financing statement is terminated.

Under the act, the priority of a perfected lien on the same mold is determined based on the time the lien attaches. The first lien that attaches has priority over liens that attach subsequent to the first lien.

**Contract provisions that are void and unenforceable**

(R.C. 1333.33)

The act specifies that any provision of a contract that waives a moldbuilder's right or an obligation of a person established under the act is void and unenforceable as against public policy. However, per the act, this specification in the law does not affect the validity of other provisions of a contract or of a related document, policy, or agreement that can be given effect without the voided provision. Additionally, the act specifies that any provision of a contract requiring the application of the law of another state rather than the lien law established by the act is void and unenforceable as against public policy.

**Enforcing a moldbuilder's lien**

(R.C. 1333.33 and 1333.34)

To enforce a moldbuilder's lien, the act requires the moldbuilder to give written notice to the customer and molder stating that a lien is claimed; the amount that the moldbuilder claims is owed for fabrication, repair, or modification of the mold; and a demand for payment. The written notice must be given by hand delivery or certified mail, return receipt requested, to the last known address of the customer and of the molder.

If the moldbuilder has not been paid the amount claimed in the notice within 90 days after that notice is received by the customer and by the molder, the act gives the moldbuilder the right to possession of the mold and allows the moldbuilder to do the following:

- (1) Enforce the right to possession of the mold by judgment, foreclosure, or any available judicial procedure;

(2) Commence a civil action in a court of common pleas to enforce the lien, including by obtaining a judgment for the amounts owed and a judgment permitting the mold to be sold at an execution sale;

(3) Take possession of the mold, if possession without judicial process can be done without breach of the peace;

(4) Sell the mold in a public auction.

A sale under the terms allowed by the act cannot, however, be made and possession cannot be obtained, if it violates a right of the customer or molder under federal patent, bankruptcy, or copyright laws.

The act allows a moldbuilder that suffers damages because of a violation of the act to obtain appropriate legal and equitable relief, including damages, in a civil action. Also, the act specifies that in any action by a moldbuilder to enforce a perfected lien under the act's provisions, the court must award the moldbuilder that is the prevailing party reasonable attorney fees, court costs, and expenses related to enforcement of the lien.

### **Workforce Development System Law**

(Section 11)

The act provides that, until June 30, 2005, a single county is to be designated a "local area" for purposes of the Workforce Development System Law (R.C. Chapter 6301.) if the county satisfies all of the following criteria:

(1) The board of county commissioners requests designation as a local area.

(2) The county has a minimum population of 175,000, based on the most recent decennial census.

(3) Prior to the act's effective date, the county had not entered into partnership with another political subdivision for the purpose of being designated a local area.

The Department of Job and Family Services and the State Workforce Policy Board are required to make adjustments as necessary in order to effectuate this provision of the act.

## **Industrial Site Improvement Program**

(R.C. 122.95, 122.951, and 122.952; Sections 5 to 7)

The act establishes the Industrial Site Improvement Program under which the Director of Development may grant up to \$1 million from the Industrial Site Improvement Fund (created in the state treasury by the act) to each "eligible county" to make improvements to "commercial or industrial areas" within the county. (See below for the program's definitions of these terms.) Under the program, improvements include, but are not limited to: (1) expanding, remodeling, renovating, and modernizing buildings, structures, and other improvements, (2) remediating environmentally contaminated property on which hazardous substances exist under conditions that have caused or would cause the property to be identified as contaminated by the state or U.S. Environmental Protection Agency, and (3) infrastructure improvements, such as roads, sewers, utility hook-ups, and site preparation.

Eligible counties apply for grants under the program by submitting applications to the Director in the form and manner prescribed by the Director. The act requires each eligible county applying for a grant to describe how the county would use the grant to improve commercial or industrial areas, and how the grant will create new jobs or preserve existing jobs and employment opportunities in the county. The eligible county must specify the amount of the grant for which it is applying.

The Director may grant up to \$1 million from the Industrial Site Improvement Fund to each eligible county upon determining that such a grant will create new jobs or preserve existing jobs and employment opportunities in the county. A county is eligible for only one grant from the fund.

For purposes of the Industrial Site Improvement Grant Program, "eligible county" means any of the following:

(1) A county designated as being in the Appalachian region under the Appalachian Regional Development Act of 1965.

(2) A county that is a "distressed area" under economic development law (section 122.16 of the Revised Code). Specifically, the county must meet two of the following criteria: (a) its average rate of unemployment, during the most recent five-year period for which data are available, is equal to at least 125% of the national average rate of unemployment for the same period, (b) it has a per capita income equal to or below 80% of the median county per capita income of the United States as determined by the most recently available figures from the

U.S. Census Bureau, or (c) in intercensal years, it has a ratio of transfer payment income to total county income equal to or greater than 25%.

(3) A county with a population of less than 100,000 in which 350 or more residents were, during the most recently completed calendar year, permanently or temporarily terminated from private sector employment for any reason not reflecting discredit on the employee.

(4) A county with a population of 100,000 or more in which 1,000 or more residents were, during the most recently completed calendar year, permanently or temporarily terminated from private sector employment for any reason not reflecting discredit on the employee.

A "commercial or industrial area" means an area established by a state, county, municipal, or other local zoning authority as being most appropriate for business, commerce, industry, or trade or an area not zoned by state or local law, regulation, or ordinance, but in which there is located one or more commercial or industrial activities.

The act transfers \$5 million during fiscal year 2005 from the Liquor Control Fund to the Industrial Site Improvement Fund, and appropriates that amount for the purposes of the program.

**Payments to municipalities and counties that attract federal jobs; NASA Shared Services Facility**

(R.C. 122.18; Section 9)

Under ongoing law, a landlord that proposes a project to create new jobs in Ohio may apply to the Tax Credit Authority to enter into an agreement for annual payments equal to the new income tax revenue. The payments are made to the landlord from state moneys not raised by taxation and are credited by the landlord to the rent owing from the tenant to the landlord for a facility. For purposes of this provision, "**landlord**" is defined as a county or municipal corporation; "**tenant**" means the United States or any department, agency, or instrumentality of the United States; "**facility**" means all real property and interests in real property owned by a landlord and leased to a tenant pursuant to a project that is the subject of an agreement; "**new income tax revenue**" means the total amount withheld by the tenant at a facility during a year from the compensation of new employees for the state income tax; and "**new employee**" is a full-time employee first employed

by the tenant in the project that is the subject of the agreement after the landlord enters into the agreement.<sup>3</sup>

The act modifies the definition of "**tenant**" to additionally include any person under contract with the United States or any department, agency, or instrumentality of the United States. "**New income tax revenue**" is modified to mean the total amount withheld by the tenant "or tenants" at a facility during a year from the compensation of new employees for the state income tax. And the definition of "**new employee**" is modified to additionally include any full-time employee first employed "under or pursuant to a contract with" the tenant in the project after the landlord enters into the agreement.

Continuing law authorizes the Tax Credit Authority to enter into an agreement with a landlord for annual payments if it determines (1) the project will create jobs in Ohio, (2) the project is economically sound and will benefit Ohio residents by increasing opportunities for employment and strengthening the state's economy, and (3) receiving the annual payments will be a major factor in the decision of the landlord and tenant to go forward with the project. The agreement must embody certain terms, including the following:

--Based on the estimated new income tax revenue to be derived from the facility at the time the agreement is entered into, provision for a guaranteed minimum payment to the landlord commencing with the issuance by the landlord of any bonds or other forms of financing for the construction of the facility and continuing for so long as such bonds or other forms of financing, or any bonds or other forms of financing issued to refund such bonds or other forms of financing, are outstanding. The act modifies this provision by providing for a "guaranteed payment" to the landlord (rather than a "guaranteed minimum payment") and specifying that the payment is to continue for "the term approved by the authority" (rather than for as long as the bonds or other forms of financing are outstanding).

--Provision for offsets to the state of the annual payment in years in which the annual payment is greater than the guaranteed minimum payment of amounts previously paid by the state to the landlord in excess of the new income tax revenue by reason of the guaranteed minimum payment. Similar to the provision above, the act replaces the term "guaranteed minimum payment" with "guaranteed payment."

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<sup>3</sup> A "landlord" also can be a corporate entity that is an instrumentality of a county or municipal corporation and that is not subject to the corporation franchise or state income tax.

--The term of the agreement, which must be the greater of 20 years or until the date on which the bonds or other forms of financing referred to above are no longer outstanding. Under the act, the term of the agreement cannot exceed 20 years.

Lastly, the act states that these changes are made in support of Ohio's effort to attract the NASA Shared Services Facility to the state. It also states that it is expected that appropriations in support of the guaranteed payments to be made with respect to that facility will be necessary commencing in state FY 2006 and will be made from state moneys not raised by taxation, including profits on the sale of spirituous liquor.

**Employee Ownership Assistance Program**

(Sections 3 and 4; R.C. 122.13, 122.131, 122.132, 122.133, 122.134, 122.135, and 122.136, not in the act)

The act repeals Section 2 of Sub. S.B. 186 of the 123rd General Assembly. In doing so, the act prevents the repeal of the Employee Ownership Assistance Program that was to have taken effect December 31, 2004. Under this program, the Director of Development is required to assist an individual or group of individuals who seek assistance in the establishment of an employee-owned corporation.

**Department of Development appropriation**

(Sections 5 to 7)

The act requires the transfer of up to \$25.8 million of unclaimed funds to the Job Development Initiatives Fund, and appropriates this money in fiscal year 2005 to the Department of Development for Investment in Training Expansion, the Worker Guarantee Program, and Wright Operating Grants.

**Conveyance to the Board of County Commissioners of Hamilton County**

(Section 8)

The act authorizes the Governor to execute a deed in the name of the state conveying to the Board of County Commissioners of Hamilton County, and its successors and assigns, all of the state's right, title, and interest in 1916 Central Parkway, Cincinnati, Ohio. The consideration for the conveyance is the purchase price of \$300,000. The net proceeds of the conveyance are to be deposited to the credit of the Unemployment Compensation Fund.

The act specifies the procedures for the preparation, execution, and recording of a deed to the real estate upon the payment of the purchase price. And it requires the Hamilton County Board of County Commissioners to pay the costs of the conveyance of the real estate. The authority to execute the conveyance expires one year after the act's effective date.

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## HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	03-09-04	p. 1664
Reported, H. Finance & Appropriations	04-29-04	pp. 1796-1797
Passed House (71-24)	05-05-04	pp. 1846-1864
Reported, S. Finance & Financial Institutions	05-26-04	p. 2007
Passed Senate (28-3)	05-26-04	pp. 2046-2051
House concurred in Senate amendments (72-26)	05-26-04	pp. 2099-2101

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