Andre Imbrogno *Legislative Service Commission*

H.B. 110

125th General Assembly
(As Introduced)

Rep. Driehaus

BILL SUMMARY

- Provides for the appraisal of tax expenditures and their automatic expiration unless renewed by the General Assembly, and provides for reappraisal of tax expenditures every five years after they are renewed.
- Provides that tax expenditures created after January 1, 2003, expire five years after their creation if not renewed after appraisal.
- Provides that tax expenditures in effect on January 1, 2003, expire on December 31, 2004 if not renewed after appraisal.
- Requires the Tax Commissioner and the Legislative Service Commission to prepare reports for each expiring tax expenditure, which assess the tax expenditure's effectiveness in achieving its intended purpose.
- Requires that bills creating or renewing a tax expenditure specify the purpose served by the tax expenditure, the date on which the tax expenditure expires, the class of taxpayers that will benefit from the tax expenditure, and methods to be used to appraise the tax expenditure.
- Creates the Tax Expenditure Sunset Review Committee to appraise tax expenditures and to make recommendations to the General Assembly regarding their renewal or expiration.

CONTENT AND OPERATION

Expiration of tax expenditures

Overview of the bill

The bill provides for the automatic expiration of new tax expenditures (i.e., tax expenditures created on or after January 1, 2003) five years after their creation unless they are renewed by the General Assembly before their expiration date. Similarly, tax expenditures that are in effect on January 1, 2003, expire on December 31, 2004, unless renewed. The bill broadly defines a "tax expenditure" to include any statutory provision that exempts persons, property, goods, or services, in whole or in part, from the operation of a tax (R.C. 101.91). Under current law, tax expenditures do not expire; they remain in existence until repealed by the General Assembly.

The bill creates a new committee, the Tax Expenditure Sunset Review Committee, which is charged with the responsibility of appraising the effectiveness of tax expenditures and making recommendations regarding their renewal or expiration. The bill apparently creates a cyclical appraisal process, whereby renewed tax expenditures undergo an appraisal from the Committee every five years until they are either repealed or allowed to expire.

Criteria for enactment of a tax expenditure

(R.C. 101.921 and 101.922)

The bill provides that an act creating a tax expenditure must specify the following:

(1) The purpose served by the tax expenditure;

(2) The date on which the tax expenditure expires;

(3) The class of taxpayers that will benefit from the tax expenditure; and

(4) Methods to be used to appraise the tax expenditure's effectiveness in serving its purpose. (The bill specifies that the methods to be used to appraise the tax expenditure's effectiveness may be specified by cross-reference to a general statute or by specifying methods that apply only to the tax expenditure being created or renewed.)

These four criteria must also be included in any act renewing a tax expenditure (see "***Specific criteria for tax expenditure renewal***," below).

Appraisal of tax expenditures created on or after January 1, 2003

(R.C. 101.92, 101.923, and 101.925)

Under the bill, any tax expenditure created on or after January 1, 2003, expires on December 31 of the fifth year after the year in which it was created unless it is renewed by the General Assembly. A tax expenditure cannot be renewed before it has undergone an appraisal. The bill establishes procedures for appraising expiring tax expenditures.

The appraisal process begins when the Tax Commissioner notifies the Tax Expenditure Sunset Review Committee of a tax expenditure's upcoming expiration. The notification must be made at least 24 months before the tax expenditure is scheduled to expire. The Committee then prepares a schedule for appraising the tax expenditure. The appraisal schedule must be such that the appraisal process and the Committee's report following the appraisal (see "***Appraisal report***," below) are completed at least one year before the tax expenditure's scheduled expiration date. The Committee's appraisal schedule must provide for a public hearing on the tax expenditure at which any person may present testimony or tangible evidence relevant to the tax expenditure. The Committee's chairperson is required to send a copy of the appraisal schedule to the Tax Commissioner for publication in the *Register of Ohio*.

Reports from the Tax Commissioner and the Legislative Service Commission

(R.C. 101.924)

For each tax expenditure scheduled for appraisal, the Tax Commissioner and any other official responsible for administering the tax expenditure must submit a report to the Tax Expenditure Sunset Review Committee. The report is due on or before the date scheduled for the tax expenditure's public hearing. The report must do all of the following:

(1) Explain the tax expenditure's purpose;

(2) Express an opinion as to the public need for the tax expenditure;

(3) Express an opinion as to whether the tax expenditure has been impeded or enhanced by existing statutes;

(4) Describe how, if at all, the tax expenditure promotes economic growth and economic development;

(5) Provide an estimate of the amount of tax revenue lost each fiscal year as a result of the tax expenditure;

(6) Express an opinion as to whether the tax expenditure should be allowed to expire or should be renewed;

(7) Set forth any other information relevant to the Committee's appraisal of the tax expenditure.

In addition, each year, beginning in 2003, the Legislative Service Commission (LSC) must prepare and submit to the Committee a report that describes every tax expenditure created on or after January 1, 2003, or renewed by the General Assembly. LSC's report must identify the tax expenditure's intended purpose and must appraise the tax expenditure's effectiveness in achieving this purpose. In appraising the tax expenditure's effectiveness, LSC is to employ appraisal methods prescribed in the bill creating or renewing the expenditure (see "***Criteria for enactment of a tax expenditure***," above).

Appraisal report

(R.C. 101.925, 101.926, and 149.43 (not in the bill))

Following a tax expenditure's public hearing, the Tax Expenditure Sunset Review Committee must complete an appraisal report that contains all of the following:

(1) A statement of the purpose served by the tax expenditure;

(2) An appraisal of the tax expenditure's effectiveness in achieving its purpose;

(3) An evaluation of whether the tax expenditure's purpose serves a public need;

(4) An evaluation of whether other statutes have enhanced or impeded the tax expenditure's effectiveness in serving its purpose;

(5) An appraisal of whether the tax expenditure promotes economic growth and development;

(6) An estimate of the amount of revenue lost each fiscal year because of the tax expenditure;

(7) A recommendation as to whether the tax expenditure should be allowed to expire or should be renewed; and

(8) Any other information the Committee considers relevant.

In an appendix to its report, the Committee must include a draft of a bill that would implement its recommendation under (7) above. In preparing its report, the Committee must consider the reports submitted to it by LSC, the Tax Commissioner, and other administrators of the tax expenditure. The Committee must also consider the testimony offered at the tax expenditure's public hearing. However, the bill permits the Committee to consider other relevant information as well.

The bill requires that the Committee submit a copy of its report to the Governor, the Tax Commissioner, the Director of Budget and Management, and each member of the General Assembly. The appraisal report is a public record subject to disclosure under the Public Records Act (R.C. 149.43).

State agencies to assist the Tax Expenditure Sunset Review Committee

(R.C. 101.925)

The bill provides that the Department of Taxation, the Office of Budget and Management, and other state agencies must provide any information in their possession that is needed by the Tax Expenditure Sunset Review Committee to appraise a tax expenditure. The bill provides, further, that LSC is to provide drafting and clerical support to the Committee.

Specific criteria for tax expenditure renewal

(R.C. 101.921, 101.922, and 101.926)

The bill sets forth specific items of information that must be included in any act that renews a tax expenditure. Specifically, any act that renews a tax expenditure can address only the subject of renewal of the tax expenditure and must specify all of the information required for acts creating a new tax expenditure (see "***Criteria for enactment of tax expenditure***," above).[1] That is, the act must specify the tax expenditure's purpose, the class of taxpayers that will benefit from the tax expenditure, and methods to be used to appraise the tax expenditure's effectiveness in serving its purpose. Also, any act that renews a tax expenditure must specify that the new expiration date for the tax expenditure is December 31 of the fifth year after the year in which the tax expenditure is renewed.

The General Assembly may renew a tax expenditure without making any changes to it. However, if the General Assembly makes changes to a tax expenditure, the act renewing the tax expenditure must do one or more of the following:

(1) Improve the tax expenditure's effectiveness in serving its purpose;

(2) Redefine the tax expenditure's purpose to serve or better serve a public need;

(3) Retain or improve the statutes that enhance, or amend or repeal the statutes that impede, the tax expenditure's effectiveness in achieving its purpose;

[1] Accordingly, "housekeeping" repeal of a tax expenditure that has expired cannot be included in an act renewing a tax expenditure (R.C. 101.922).

(4) Improve the tax expenditure's effectiveness in promoting economic growth and development; or

(5) Reduce the amount of revenue lost as a result of the tax expenditure.

If the Tax Expenditure Sunset Review Committee recommends renewal of a tax expenditure, its appraisal report must contain a commentary to the bill draft explaining how, if at all, the renewal will achieve any of the goals set forth in (1) through (5) above.

Appraisal of tax expenditures in effect on January 1, 2003

(R.C. 101.921, 101.922, 101.925, and 101.926; Sections 2 and 3)

Under the bill, a tax expenditure that is in effect on January 1, 2003 expires on December 31, 2004 unless it is renewed before it expires. On or before January 1, 2004, the Tax Commissioner must prepare a list of the tax expenditures in existence on January 1, 2003 and provide the list to the Tax Expenditure Sunset Review Committee. At that point, the Committee must proceed with the appraisal process as described above. If renewed, the tax expenditure undergoes reappraisal every five years until it is either repealed or allowed to expire. The Committee's appraisal reports must be completed on or before November 1, 2004.

Tax Expenditure Sunset Review Committee: composition, appointments, terms of office, compensation, and quorum

(R.C. 101.927; Section 4)

The Tax Expenditure Sunset Review Committee is composed of nine members. The President of the Senate appoints three of the members of the Committee, not more than two of whom can be members of the same political party. The Speaker of the House of Representatives also appoints three members. Here again, no more than two of the three members appointed can be members of the same political party. The Governor, with the advice and consent of the Senate, appoints three members of the Committee, not more than two of whom can be members of the same political party. All of the appointments must be made within 15 days of the first day of the General Assembly's first regular session. The bill requires that initial appointments to the Committee be made within 30 days after the bill's effective date. Members of the Committee may not be reappointed to successive terms. Thus, the Committee's composition changes with each General Assembly.

Legislative members of the Committee hold office until their successors are appointed or until they cease to be members of the General Assembly. Members who are appointed by the Governor hold office until December 31 of the year following the year in which they are appointed. (The Governor's initial appointees hold office until December 31, 2004 regardless of when they are appointed.) A member appointed by the Governor continues to hold office until the member's successor is appointed or until 30 days have elapsed, whichever occurs first.

A vacancy on the Committee is filled in the same manner as the original appointment. A member who is appointed to fill a vacancy that occurs prior to the expiration of the member's predecessor's term serves as a member of the Committee for the remainder of the unexpired term.

The bill provides that in the first regular session of the General Assembly, the Committee must elect from its membership a member of the House of Representatives to serve as chairperson and a member of the Senate to serve as vice-chairperson. In the second regular session of the General Assembly, the Committee must elect from its membership a member of the Senate as chairperson and a member of the House of Representatives as vice-chairperson.

Members of the Committee receive no compensation. However, members are reimbursed for actual and necessary expenses incurred by them in performing committee duties.

The bill provides that the Committee is to meet as often as is necessary for it to perform its duties. Five members of the Committee constitute a quorum. The Committee may not take any action without the concurrence of at least five of its members. A vacancy does not prevent the Committee from performing its duties as long as there is a quorum present.

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	03-06-03	p. 213

h0110-i-125.doc/kl