



Am. Sub. H.B. 427*

125th General Assembly

(As Passed by the House)

Reps. Martin, Calvert, Hoops, C. Evans, D. Evans, Faber, Flowers, Hughes, T. Patton, Schmidt, Schneider, Trakas, Aslanides, Collier, Domenick, Gibbs, Gilb, Hagan, Oelslager, Reidelbach, Walcher

BILL 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 that the increased period be reflected in the statements that are required by law to be incorporated into enterprise zone agreements.
- Requires an enterprise zone agreement to contain a clause requiring the business to annually repay the amount of foregone property taxes if 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 year.
- Establishes the Business Incubator Program under which the Director of Development is required to provide grants to local development districts for the purpose of making loans to certain businesses in eligible counties.
- Requires an eligible business applying for a loan under the Business Incubator Program to specify how the loan will create new jobs or preserve existing jobs and employment opportunities in, and improve the economic welfare of the people of, the eligible county.

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

- Limits the loan amount under the Business Incubator Program to \$30,000 per eligible business.
- 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.
- Makes appropriations for both the Business Incubator and Industrial Site Improvement programs.
- Modifies the law authorizing payments to municipalities and counties that attract federal jobs.
- Prevents the repeal of the Employee Ownership Assistance Program that is 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 for up to ten years, or up to 15 years if the project involves the enrichment and commercialization of uranium or uranium products or research and development activities related to that enrichment or commercialization **and** either the project includes a fixed asset investment of at least \$100 million or the Director of Development determines there are 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 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 bill

Increase in length of exemptions and provision of governmental services

(R.C. 5709.62 and 5709.63)

The bill 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 bill 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 bill 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 bill 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, current law requires 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 bill 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)(12))

The bill requires an enterprise zone agreement to contain a clause requiring the business to annually repay the amount of foregone property taxes if 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 year. Specifically, the clause would state that "in any calendar year during which [the] agreement is in effect, if the actual number of employee positions created or retained by (insert name of enterprise) is not equal to or greater than seventy-five per cent of the number of employee positions estimated to be created or retained under this agreement that year, (insert name of enterprise) shall repay the amount of taxes on property that would have been payable had the property not been exempted from taxation that year under this agreement."

Principal city conforming change

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

Under current 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 bill). Formerly, the term "central city" was used in this definition. The bill makes two conforming changes to the Enterprise Zone Law in recognition of this change.

Business Incubator Program

(R.C. 4928.62, 4928.64, 4928.641, 4928.642, 4928.643, and 4928.644; Sections 5 and 6)

The bill establishes the Business Incubator Program under which the Director of Development is required to disburse money from the Business



Incubator Grant Fund (created in the state treasury by the bill) to each "local development district" in Ohio so that an equal share is made available to each "eligible county" from the fund. Under the federal Appalachian Regional Development Act of 1965, a "local development district" means a type of nonprofit entity operating under a charter or authority that includes the economic development of counties or parts of counties or other political subdivisions within the region, and that has been certified by the Governor to the Appalachian Regional Commission as operating as such.¹ An "eligible county" means a county designated as being in the Appalachian region under the same act.² Money disbursed from the fund must be deposited into each district's Business Incubator Loan Fund, which each district is required to create, for the exclusive purpose of making loans to "eligible businesses." An "eligible business" is a business that establishes, acquires, maintains, expands, remodels, rehabilitates, or modernizes its facilities in an eligible county, thereby creating new jobs or preserving existing jobs and employment opportunities in, and improving the economic welfare of the people of, the eligible county.

Under the bill, eligible businesses apply for loans by submitting applications to the local development district in the form and manner prescribed by the district. The bill requires each applicant to provide a detailed description of the applicant's business facilities and business activities in the eligible county and specify how the loan will create new jobs or preserve existing jobs and employment opportunities in, and improve the economic welfare of the people of, the eligible county. The applicant also must specify the amount of the loan for which the applicant is applying. Under the bill, financial statements and other information submitted by an applicant for the purpose of obtaining a loan from a district's Business Incubator Loan Fund are not open to public inspection.

The district may approve an application for a loan if it determines that the loan will create new jobs or preserve existing jobs and employment opportunities in, and improve the economic welfare of the people of, the eligible county. The district may approve a loan in an amount other than the amount specified in the application. Applications approved by the district are to be forwarded to the Director along with a notice if the district has approved a loan amount other than the amount in the application. Upon the Director's consent, the district may make

¹ 40 U.S.C. § 14102(a)(2).

² Specifically, Adams, Athens, Belmont, Brown, Carroll, Clermont, Columbiana, Coshocton, Gallia, Guernsey, Harrison, Highland, Hocking, Holmes, Jackson, Jefferson, Lawrence, Meigs, Monroe, Morgan, Muskingum, Noble, Perry, Pike, Ross, Scioto, Tuscarawas, Vinton, and Washington counties. See, 40 U.S.C. § 14102(a)(1)(H).

a loan to the applicant in the amount approved from the district's Business Incubator Loan Fund.

The bill requires that each loan be evidenced by a written agreement between the district and the eligible business receiving the loan. The agreement must specify all the terms and conditions of the loan as determined by the district. No loan may exceed \$30,000 or have a term that exceeds 15 years. Loan repayments are to be credited to the district's Business Incubator Loan Fund. Interest does not accrue on a loan until seven years following the date on which the loan was made. At that time, interest accrues on the unpaid principal balance of the loan at a rate equal to two-thirds of the average prime fixed rate of interest on the date interest begins to accrue. Additionally, an eligible business and its owners, subsidiaries, and other related members are eligible for only one loan under the Business Incubator Program.

The bill transfers \$8.7 million during fiscal year 2005 from the Energy Efficiency Revolving Loan Fund to the Business Incubator Grant Fund, and appropriates that amount for the purposes of the program.

Industrial Site Improvement Program

(R.C. 4928.65, 4928.651, and 4928.652; Sections 5 and 6)

The bill also 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 bill) 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 bill 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. Each eligible county must specify the amount of the grant for which the county 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 eligible county. An eligible county is eligible for only one grant from the Industrial Site Improvement 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 bill transfers \$3.3 million during fiscal year 2005 from the Energy Efficiency Revolving Loan 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 current 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 personal income tax levied under Chapter 5747. of the Revised Code; 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.³

The bill 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 personal 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.

Current 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:

³ 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.

--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 bill 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 bill replaces the term "guaranteed minimum payment" with "guaranteed payment."

--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 bill, the term of the agreement cannot exceed 20 years.

Lastly, the bill 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 bill)

The bill repeals Section 2 of Sub. S.B. 186 of the 123rd General Assembly. In doing so, the bill 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 bill requires the transfer of up to \$25.8 million of unclaimed funds to the Job Development Initiatives Fund, and appropriates this money 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 bill 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 (R.C. 4141.09(A)--not in the bill).

The bill 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 bill's effective date.

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	03-09-04	p. 1664
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