Bill Analysis

Christopher O'Connell Legislative Service Commission

S.B. 165

125th General Assembly
(As Introduced)

Sens. Schuring, Schuler, Fedor, Dann

BILL SUMMARY

- Establishes a statutory lien to secure the performance of obligations by recipients of development loans, grants, and loan guarantees made pursuant to Section 13, Article VIII of the Ohio Constitution.
- Establishes a statutory lien to secure the performance of obligations under a tax exemption agreement entered into as part of an enterprise zone or community investment area or through tax increment financing.
- Requires certain development loan, grant, loan guarantee, and tax exemption agreements to prohibit the recipient from selling or transferring any property financed with the loan or grant, or exempted from taxation, before the recipient fulfills obligations under the loan, grant, guarantee, or exemption agreement.

CONTENT AND OPERATION

Overview

Section 13 of Article VIII of the Ohio Constitution provides for economic development programs to benefit the state's industry, commerce, distribution, and research. Pursuant to this authority, the General Assembly has developed programs designed to invest in areas throughout the state to promote economic growth. Under the programs, the state and local governments assist in and facilitate the establishment or development of projects that will create new jobs or preserve existing jobs and employment opportunities. Assistance is generally provided in the form of direct loans, loan guarantees, and grants. Bonds that are not backed by tax revenue can be issued to raise money necessary for providing the assistance.

Additionally, tax assistance for economic development at the local level is carried out by way of three main programs--community reinvestment areas, enterprise zones, and tax increment financing. Assistance under these programs is generally provided in the form of tax exemptions that are applied to certain properties or improvements.

Securing performance under development loans, grants, and loan guarantees

(R.C. 9.661, 165.02, 166.06, 166.07, and 166.21; R.C. 166.02 and 184.02, not in the bill)

Current law authorizes, but does not require, liens and other security interests for development loans and, in certain instances, authorizes unsecured loans. The terms of any lien, such as its amount or priority, are left to the discretion of the Director of Development or other person administering the loan.

Under the bill, every development loan and loan guarantee made pursuant to Section 13, Article VIII of the Ohio Constitution, whether granted by the state or by a local government, is secured by a lien on the borrower's property (both real and personal) that is acquired with the loan and also on the borrower's other property in Ohio. The lien is for the amount financed under the development loan agreement or for the amount guaranteed under the loan guarantee agreement. In addition to securing repayment of the loan, the bill's lien also secures the fulfillment of all other obligations under the loan or loan guarantee agreement. The bill specifies that the lien "attaches" when any portion of the loan proceeds is transferred to the borrower, and is "perfected" upon attachment.[1] The lien has priority over all other liens regardless of when attached, excluding claims of the United States government having higher priority under federal law.

Development grants made under the authority of Section 13, Article VIII of the Ohio Constitution also are required to be secured by similar liens on the grantee's property in Ohio. Such a lien is for the amount of the grant or other thing of value transferred under the agreement.

The bill provides that liens against real property are to be enforced by civil action in the court of common pleas of the county where the real property is located. Such liens are to be enforced in the same manner as mortgage liens are enforced. Liens against personal property, however, are to be enforced in the same manner as security interests under the Uniform Commercial Code Secured

[1] To say that a lien "attaches" is to recognize the lien's creation or existence, thereby granting the secured party certain rights against the borrower, while the "perfection" of a lien recognizes its priority over subsequently perfected security interests or unperfected security interests, regardless of when those unperfected security interests attached.

Transactions Law, except to the extent the provisions of that law regarding priority, attachment, and perfection are inconsistent with the bill's provisions.

The bill specifies that the programs to which it applies include the Industrial Development Bond Program (R.C. Chapter 165.), the Facilities Establishment Fund, Innovation Ohio, and Research and Development Project Programs (R.C. Chapter 166.), the Third Frontier Commission Program (R.C. Chapter 184.), and the Community Improvement Corporation Program (R.C. Chapter 1724.).

Securing performance under tax exemption agreements

(R.C. 3735.68, 5709.634, and 5709.831)

Under continuing law, the legislative authority of a municipal corporation or a county may grant exemptions from taxation for certain improvements to property in its jurisdiction. The tax exemptions are provided pursuant to three main programs--community reinvestment areas, enterprise zones, and tax increment financing. Additionally, townships are authorized to grant tax increment financing exemptions for improvements in unincorporated areas.

The bill places a lien on property that is exempted from taxation under the programs referred to in the preceding paragraph.[2] While continuing law authorizes tax exemptions within a community reinvestment area for commercial, industrial, and residential property, the bill limits the lien under such a program to commercial or industrial property.[3] The lien is to secure the property owner's performance under the tax exemption agreement. The amount of the lien is equal to the amount of taxes that would have been charged on the property had it not been exempted, less any taxes paid on such property and, for a tax increment financing project, less any required payments in lieu of taxes to reimburse local taxing authorities. Additionally, the lien has the same priority as property tax liens.

Under the bill, the liens on property exempted from taxation under the community reinvestment area and tax increment financing programs are to be enforced in the same manner as mortgage liens. The enforcement of liens on property exempted from taxation under the enterprise zone program, however,

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[2] *In the case of tax exemptions provided through tax increment financing, continuing law does not require an agreement between the local government and the property owner. As such, the bill's lien applies only if there is an agreement that places obligations on the owner. R.C. 5709.40, 5709.41, 5709.73, and 5709.78, not in the bill.*

[3] *R.C. 3735.66, not in the bill.*

depends on the type of property exempted. Liens on real property are to be enforced in the same manner as mortgage liens, while liens on tangible personal property are to be enforced in the same manner as liens for taxes on tangible personal property.

Prohibiting sale or transfer of certain property

(R.C. 9.661(C), 3735.68(B), 5709.634(B), and 5709.831(C))

Finally, the bill requires any development loan, loan guarantee, grant, or tax exemption agreement discussed above to prohibit the recipient from selling or transferring any property financed with the loan or grant, or exempted from taxation, before the recipient fulfills its obligations under the loan, guarantee, grant, or exemption agreement.

HISTORY

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