



Am. Sub. S.B. 206
125th General Assembly
(As Passed by the Senate)

Sens. Austria, Armbruster, Carey, Randy Gardner, Harris, Mumper, Spada, Stivers, Robert Gardner, Schuler

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.
- 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.
- 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.
- Authorizes the conveyance of state-owned real estate in Hamilton County to the Board of County Commissioners of Hamilton County.
- 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.
- Declares an emergency.

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CONTENT AND OPERATION

Enterprise zones and urban jobs and enterprise zones

Background

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

Under current 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 (1) a business's proposed investment in buildings, equipment, and inventory, (2) the estimated number of employees to be hired or retained and the payroll for them, and (3) the 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.



Increase in length of exemptions and provision of governmental services

(R.C. 5709.62 and 5709.63; 5709.632(C) (not in bill))

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.

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.

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 current 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 bill). The bill 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 bill states that a municipal cooperation, 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."¹

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

¹ 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.*

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 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 bill to file a notice with the county recorder for the county in which the property is located that clearly identifies 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 bill 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 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 bill to charge a fee of \$14 to record either of these notices. 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 bill 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 bill

(Section 6)

The bill states that it applies to applications for exemption that are pending on, or are filed on or after, the bill's effective date. Any application for exemption under an urban renewal program, community redevelopment program, or TIF program that was approved prior to the bill's effective date is to be considered to have been granted subject to the limitations set forth in the bill. These applications may, but are not required to, be re-filed with the Tax Commissioner within 90 days after the bill'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 bill. 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 bill'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 bill'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 bill authorizes the Tax Commissioner to adopt rules to implement the above-described sections (R.C. 5709.91 and 5709.911) of the bill.

Community reinvestment areas; priority of exemptions

(R.C. 5709.92)

Under current law, a community reinvestment area is an area in which housing facilities or structures of historical significance are located and new housing construction and repair of existing facilities or structures are discouraged. The designation of an area as a community reinvestment area is made by a resolution adopted by the legislative authority of the municipality or county in which the area is located. Newly constructed or remodeled structures located in a community reinvestment area may qualify for an exemption from real property taxation. (R.C. 3735.65 to 3735.70.)

Under the bill, if--prior to enacting an ordinance under a TIF program or entering into a development agreement under an urban renewal or community redevelopment program--a municipal corporation adopted a resolution establishing a community reinvestment area, the municipal corporation may adopt an ordinance declaring that an exemption from taxation granted to a property owner under that community reinvestment area program takes precedence over any exemption granted under an urban renewal, community redevelopment, or TIF program whether the exemption under the community reinvestment area program is applied for prior to or after the exemption under the urban renewal, community redevelopment, or TIF program is granted.

TIF reporting requirements for townships

(R.C. 5709.73)

Under current law, townships that have adopted a resolution establishing a TIF program must 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 bill 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. Current law 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 bill 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 a public entity or charitable organization 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 bill)

Under existing law, a molder² 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 current law;
- (3) Costs and interest awarded in a judgment.

² A "molder" is defined in existing law 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).)

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

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

A perfected lien remains valid under the bill 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 bill, 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 bill specifies that any provision of a contract that waives a moldbuilder's right or an obligation of a person established under the bill is void and unenforceable as against public policy. However, per the bill, 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 bill specifies that any provision of a contract requiring the application of the law of another state rather than the lien law established by the bill 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 bill 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 bill 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 bill 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 bill allows a moldbuilder that suffers damages because of a violation of the bill to obtain appropriate legal and equitable relief, including damages, in a civil action. Also, the bill specifies that in any action by a moldbuilder to enforce a perfected lien under the bill'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 7)

The bill 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 bill'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 bill.

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 is to be deposited into the state treasury 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.

Department of Development appropriation

(Sections 3 to 5)

The bill requires the transfer of up to \$25.8 million of unclaimed funds to the Job Development Initiatives Fund, which is created by the bill, and appropriates this money to the Department of Development for Investment in Training Expansion, the Worker Guarantee Program, and Wright Operating Grants.³

³ See the Legislative Service Commission's Fiscal Note for S.B. 206 for a detailed discussion of the bill's appropriation provisions.

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	03-09-04	p. 1605
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