



**Sub. H.B. 365\***

126th General Assembly

(As Reported by H. Local and Municipal Government and Urban Revitalization)

**Reps. Setzer, Reidelbach, Harwood, Reinhard**

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**BILL SUMMARY**

- Removes the limitation that only four limited combinations of municipal corporations and townships may create a joint economic development district (JEDD) under two (R.C. 705.70 and R.C. 705.71) of three current procedures for creating JEDDs.
- Revises aspects of the procedure governing the creation of a JEDD under R.C. 715.70, including changes with respect to notices associated with a public hearing on a proposed JEDD, the permissible territory of a proposed JEDD, and board of county commissioners' approval or disapproval of a proposed JEDD.
- Allows as a purpose for the conduct of an executive session under the Open Meetings Law the consideration of negotiated terms and other matters related (1) to becoming a JEDD under any of the three statutory procedures or (2) to entering into a cooperative economic development agreement (CEDA) under the Municipal Law.

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**CONTENT AND OPERATION**

**Background law**

Joint economic development districts (JEDDs) are special purpose districts created for the purpose of facilitating economic development to create or preserve jobs and employment opportunities and to improve the economic welfare of

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\* *This analysis was prepared before the report of the House Local and Municipal Government and Urban Revitalization Committee appeared in the House Journal. Note that the list of co-sponsors and the legislative history may be incomplete.*

people in Ohio and in the townships and municipal corporations creating the districts (R.C. 715.70(B)(1), 715.71(B), and 715.72(C)).

JEDDs may be formed under one of the following three different procedures:

(1) A detailed procedure contained in R.C. 715.70 that applies only to (a) municipal corporations and townships within counties that have adopted a charter, (b) JEDDs created by municipal corporations and townships and composed solely of municipal corporation territory that includes an airport that is owned by the municipal corporation and located entirely beyond its borders, (c) municipal corporations or townships that are part of or contiguous to a transportation improvement district and that created a JEDD prior to November 15, 1995, or (d) municipal corporations that "previously" created a JEDD consisting only of municipal territory that included an airport, and that create a new JEDD with other municipal corporations and townships apparently by adding territory that does not consist solely of an airport described in (b) above. Under this restricted procedure, in addition to other requirements, the JEDD cannot exceed 2,000 acres in area.

(2) An *alternative* detailed procedure contained in R.C. 715.71 that applies to the *same areas* enumerated in (1)(a) to (d) above, but involving some different procedural aspects. For example, the acreage limitation mentioned above does not apply under the alternative procedure.

(3) Another alternative detailed procedure contained in R.C. 715.72 to 715.81 that applies to townships and municipal corporations located throughout the state, but is limited to areas where no electors reside that are not (and cannot be) zoned for residential use.

A JEDD is governed by a board of directors. Powers and duties of the board as well as the rights and duties of participating townships and municipal corporations are established by statute and principally by a contract between the parties. The contract also specifies the extent of each party's contribution of services, money, or property to the JEDD and each party's share of the cost of operating the JEDD. The contract may grant to the board the power to levy an income tax on persons and businesses residing in, working in, or operating in the JEDD.

### **Changes proposed by the bill**

#### **Changes in the JEDD Law**

**Overview.** The bill restructures technically and revamps substantively the provisions of R.C. 715.70 for creating a JEDD. These changes do not affect the

procedures and requirements for creating a JEDD under the alternative provisions of R.C. 715.72 to 715.81 discussed in item (3) under "**Background law**," above, but have some consequences for creating a JEDD under the alternative provisions of R.C. 715.71.

**Eligible political subdivisions and requisite territory.** The bill removes the limitations described in items (1) and (2) under "**Background law**," above, upon the *types* of municipal corporations and townships that can create JEDDs under both (1) the procedure prescribed in R.C. 715.70 *as revised by the bill* (see subsequent portions of this analysis) and (2) the alternative procedure prescribed in R.C. 715.71's continuing law.<sup>1</sup> As under current law, R.C. 715.70's provisions constitute an alternative procedure to creating a JEDD in Ohio--an alternative to R.C. 715.71's provisions and R.C. 715.72 to 715.81's provisions discussed in items (2) and (3) under "**Background law**," above. (R.C. 715.70(A).)

Specifically, under the bill, *one or more municipal corporations and one or more townships* (not restricted by type as under current law) may enter into a contract approved by the legislative authority of each contracting party pursuant to which they create as a JEDD under R.C. 715.70 an area or areas for the purpose of facilitating economic development to create or preserve jobs and employment opportunities and to improve the economic welfare of the people in Ohio and in the area of the contracting parties. A municipal corporation also may enter into an existing contract with other municipal corporations and townships to create a new JEDD. (R.C. 715.70(B)(1).)

Relatedly, in a manner *broader* than under current law, the bill requires the territory of each of the contracting parties associated with a R.C. 715.70 JEDD to be *contiguous* (1) to the territory of at least one other contracting party or (2) to the territory of a township or municipal corporation that is contiguous to another contracting party. In the case of situation (2), the intervening township or municipal corporation is not a contracting party, and there cannot be more than one such intervening township or municipal corporation separating the contracting parties. (R.C. 715.70(C)(1).)

Similar to current law, a JEDD created under R.C. 715.70 must be located within the territory of one or more of the contracting political subdivisions and may consist of all or a portion of that territory. And, similar to current law (but relocated in the bill), the JEDD cannot exceed 2,000 acres in area, and the JEDD's

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<sup>1</sup> *Other than this impact upon the creation of a JEDD under R.C. 715.71, the bill does not substantively affect that statute. The bill does change cross-references in that statute to the **relocated** provisions of R.C. 715.70, some of which apply and some of which do not apply to JEDDs created under R.C. 715.71 (see its division (A)).*

territory cannot completely surround territory not included within the JEDD's boundaries. But, unlike current law, the JEDD cannot include any *area zoned for residential use*. (R.C. 715.70(C)(2) and (3).)

**JEDD contract provisions.** As under current law (relocated in the bill), the contract creating a JEDD under R.C. 715.70 must set forth or provide for the amount or nature of the contribution of each municipal corporation and township to the JEDD's development and operation and may provide for the sharing of the costs of the JEDD's operation and improvements. The contributions may be in any form to which the contracting municipal corporations and townships agree and may include, but are not limited to, the provision of services, money, real or personal property, facilities, or equipment. The contract *may provide* for the contracting parties to share revenue from taxes levied on property by one or more of them if those revenues may lawfully be applied to that purpose under the legislation by which those taxes are levied. And, it *must provide* for new, expanded, or additional services, facilities, or improvements (including expanded or additional capacity for or other enhancement of existing services, facilities, or improvements)--provided that the services, facilities, or improvements (or expanded or additional capacity for or other enhancement of existing services, facilities, or improvements) required have been provided within the two-year period before the contract's execution. (R.C. 715.70(B)(2).)

**Public hearing: notice provisions.** Similar to current law, before the legislative authority of a municipal corporation or a board of township trustees passes any ordinance or resolution approving a contract to create a JEDD under R.C. 715.70, the legislative authority of each municipal corporation and each board of township trustees must hold a public hearing concerning the proposed contract, after providing notice of the time and place of the hearing. But, under the bill, the notice must be given in two ways (R.C. 715.70(D)(1)):

(a) By publication at least once a week for a period of three consecutive weeks before the hearing in a newspaper of general circulation in the municipal corporation and the township. Current law also requires publication notice, but for the 30-day period before the public hearing.

(b) In a writing sent by *regular United States mail* at least 30 days before the hearing to all property owners in the proposed district at their addresses appearing on the county auditor's current tax list. This notice, which is not required by current law, must contain a statement that the property owner in turn is required to notify any lessee of the property of the information contained in the written notice.

As under current law, a board of township trustees may provide an additional notice to township residents that includes the public hearing



announcement, a summary of the terms of the proposed contract, a statement that the entire text of the proposed contract and district maps and plans are on file for public examination in the office of the township fiscal officer, and information pertaining to any tax changes that will or may occur as a result of the proposed contract (R.C. 715.70(D)(2)).

The bill adds another new notice-related provision: any error, irregularity, or defect in any type of notice mentioned above would *not* render a contract creating a JEDD under R.C. 715.70 invalid if the contract has been approved and signed by all of the participating municipal corporations and townships (R.C. 715.70(C)(3)).

**Pre-hearing miscellaneous provisions.** As under current law, during the 30 or more day period before a public hearing, a copy of the text of the proposed contract, together with copies of district maps and plans related to or part of the proposed contract, must be *on file, for public examination*, in the offices of the clerk of the legislative authority of each participating municipal corporation and of the township fiscal officer of each participating township (R.C. 715.70(D)(4)). And, also similar to current law, before the public hearing, the participating parties must give a copy of the proposed contract to *each municipal corporation* located within one-quarter mile of the proposed JEDD that is *not a party* to the proposed contract, and afford that municipal corporation the reasonable opportunity, for a period of 30 days following receipt of the proposed contract, to make comments and suggestions to the participating parties regarding elements contained in the proposed contract (R.C. 715.70(D)(5)).

**Conduct of the public hearing.** As under current law, the public hearing must allow for public comment and recommendations from the public on the proposed contract. The contracting parties may include any of those recommendations in the proposed contract before its approval. (R.C. 715.70(D)(4).)

**Post-public hearing provisions.** The bill expressly states what current law implies is the case--namely, that, after the public hearing, the legislative authority of each participating municipal corporation and each participating board of township trustees may adopt an ordinance or resolution approving the contract creating the JEDD under R.C. 715.70 (R.C. 715.70(E)(1)). Similar to current law (but relocated in the bill), any resolution of a participating board of township trustees that approves a JEDD contract is subject to a referendum of the electors of the township in accordance with a specified detailed procedure (R.C. 715.70(E)(2)). Also, similar to current law, after the JEDD contract is executed, a participating municipal corporation or township must *file a copy* of the fully executed contract with *the county recorder* of each county within which a party to the contract is located, for recordation in the miscellaneous records of the county.

The bill also continues without substantive amendment current law's provisions (1) generally precluding annexation, merger, or consolidation proceedings with a municipal corporation of any unincorporated territory within a JEDD created under R.C. 715.70 for a period of three years after the contract is filed with the county recorder of each county within which a party to the contract is located and (2) specifying that the JEDD contract may provide for the prohibition of any annexation by the participating municipal corporations of any unincorporated territory within the JEDD district beyond that three-year period. (R.C. 715.70(E)(3) and (4).)

**Petition to the county.** As under current law, after the legislative authority of each municipal corporation and each board of township trustees have adopted an ordinance and resolution approving a contract to create a JEDD under R.C. 715.70 and after the JEDD contract has been signed, the municipal corporations and townships must jointly file a petition with the board of county commissioners of each county within which a party is located. The petition generally must contain the same information as under current law, but, in addition to it including a statement that the area or areas of the JEDD are not greater than 2,000 acres and are located within the territory of one or more of the contracting parties, the bill requires the petition to state that the areas do *not include* any area zoned for residential use. The petition generally also must be accompanied by the same documents as under current law, except that the *certificate* from each contracting party pertaining to the public hearing mentioned previously must contain not only a statement that the hearing was conducted and of its date but also evidence of the newspaper publication (current law) and *mailing* (added by the bill) of the requisite notices of the hearing. (R.C. 715.70(F)(1).)

**County approval or disapproval of a petition.** As a general rule and similar to current law, the board of county commissioners of each county within which a party to a JEDD contract is located *must* adopt a resolution approving the petition for the creation of the JEDD under R.C. 715.70 if the petition and other documents have been filed in accordance with continuing law's and the bill's requirements. But, as under current law, if the petition and other documents do not substantially meet those requirements, the board of county commissioners of any such county may adopt a resolution disapproving the petition. (R.C. 715.70(F)(2).)

Further, under the bill, the board of county commissioners of any such county, *in its own discretion*, may adopt a resolution disapproving the petition if the contract does not contain a provision (1) that specified property tax levies *will not be subject* to any enterprise zone-related tax exemption allowed under R.C. 715.70 or authorized under the Enterprise Zone Law and (2) that, for the duration of the JEDD contract, revenues from those tax levies will be distributed to political

subdivisions as otherwise provided by law. The specified tax levies include those under the Tax Levy Law (R.C. 5705.19, 5705.22, 5705.221, 5705.23, and 5705.24--not in the bill) (a) for the general construction, reconstruction, resurfacing, and repair of streets, roads, and bridges in municipal corporations, counties, or townships, (b) for parks and recreational purposes, (c) for the maintenance of a county home or detention facility, (d) for community mental retardation and developmental disabilities programs and services, (e) for providing or maintaining senior citizens services or facilities, (f) for the provision and maintenance of zoological park services and facilities, (g) for the establishment and operation of a 9-1-1 system, (h) for a countywide public safety communications system, (i) for support by a county of criminal justice services, (j) for the purpose of maintaining and operating a jail or other detention facility, (k) to acquire an agricultural easement and to supervise and enforce the easements (board of county commissioners only), (l) for county hospitals, (m) for alcohol, drug addiction, and mental health services, (n) for library purposes, and (o) for the support of children services and the placement and care of children. (R.C. 715.70(F)(2).)

Finally, as under current law, a board of county commissioners must adopt the resolution approving or disapproving the petition within 30 days after its filing. If the board does not do so, the petition will be deemed approved, and the contract will go into effect immediately after that approval or at such other time as the JEDD contract specifies. (R.C. 715.70(F)(2).)

**Post-JEDD creation provisions.** The bill continues without substantive modification the provisions of current law pertaining to an R.C. 715.70 JEDD after its creation, including, but not limited to, those pertaining to the filing of documents with the Director of Development, the nature of the JEDD's board of directors and its powers, duties, and functions (e.g., its ability to levy an income tax within the district), and the potential amendment of a JEDD contract (R.C. 715.70(F)(3), (G), (H), (I), (J), (K), and (L)).

### **Changes in the Open Meetings Law**

#### **Current law**

Under current law, all public bodies must take official action and conduct all deliberations upon official business only in *open meetings*, unless specifically excepted by law. The Open Meetings Law defines a "meeting" as any prearranged discussion of the public business of the public body by a majority of its members.

An executive session is a portion of a meeting from which the public is excluded and at which only the persons a public body may invite are permitted to be present. Apart from certain special executive session provisions with regard to



five specified public bodies, the Open Meetings Law provides that the members of a public body may hold an executive session only after a majority of a quorum of the public body determines, by a roll call vote, to hold such a session and only at a regular or special meeting for the sole purpose of considering any of the following (R.C. 121.22(G)):

(1) The appointment, employment, dismissal, discipline, promotion, demotion, or compensation of a public employee or official, or the investigation of charges or complaints against a public employee, public official, licensee, or regulated individual, unless the employee, official, licensee, or regulated individual requests a public hearing. However, except as otherwise provided by law, no public body is permitted to hold an executive session for the discipline of an elected official for conduct related to the performance of the official's duties or for the official's removal from office.

(2) The purchase of property, or the sale of property by competitive bidding, if premature disclosure of information would give an unfair competitive or bargaining advantage to certain persons;

(3) Conferences with an attorney for the public body concerning disputes involving it that are the subject of pending or imminent court action;

(4) Preparing for, conducting, or reviewing negotiations or bargaining sessions with public employees concerning their compensation or other terms and conditions of their employment;

(5) Matters required to be kept confidential by federal law or rules or state statutes;

(6) Details of security arrangements and emergency response protocols for a public body or a public office, if disclosure of the matters to be discussed in executive session could reasonably be expected to jeopardize the security of the public body or public office;

(7) In the case of a county or municipal hospital, to consider trade secrets.

The motion and vote to go into executive session must specify the purpose of the executive session. If the purpose is personnel-related, the public body must indicate the specific personnel action to be discussed.

**Change proposed by the bill**

The bill adds to the latter list of purposes for calling an executive session the following: to consider negotiated terms and other matters related to (1) *becoming a JEDD* under (a) R.C. 715.70, (b) R.C. 715.71, or (c) R.C. 715.72 to

715.81 or (2) *entering into a cooperative economic development agreement (CEDA) under the Municipal Law. As under current law, if a public body holds an executive session to consider those negotiated terms or related matters, the motion and vote to hold the executive session must state that it is being held for that consideration. (R.C. 121.22(G)(8)).*<sup>2</sup>

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## HISTORY

| ACTION                                                              | DATE     |
|---------------------------------------------------------------------|----------|
| Introduced                                                          | 10-04-05 |
| Reported, H. Local & Municipal Government<br>& Urban Revitalization | ---      |

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<sup>2</sup> *The legislative authority of one or more municipal corporations, by ordinance or resolution, and the board of township trustees of one or more townships, by resolution, may enter into a CEDA. The board of county commissioners of one or more counties may become a party to a CEDA upon the written consent of the legislative authority of each municipal corporation and the board of township trustees of each township that is a party to the agreement. A CEDA may provide for any of several statutorily specified matters, such as the provision of joint services and permanent improvements within incorporated or unincorporated areas, the provision of services and improvements by a municipal corporation in unincorporated areas, the provision of services and improvements by a county or township within the territory of a municipal corporation, the payment of service fees to a municipal corporation by a township or county, and the payment of service fees to a township or a county by a municipal corporation. (R.C. 701.07--not in the bill.)*

