Ohio Legislative Service Commission

Bill Analysis

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Sub. H.B. 289

130th General Assembly
(As Reported by H. State and Local Government)

Reps. Schuring, Beck, Brenner, Grossman, Henne, Hood, McGregor, Hackett

BILL SUMMARY

- Terminates, on January 1, 2015, the authority of municipal corporations, or of municipal corporations and townships, to create new or to substantially amend existing joint economic development zones (JEDZs).
- Prohibits the renewal of a JEDZ contract after December 31, 2014.
- Expressly requires subdivisions that enter into or substantially amend a JEDZ contract between the bill's effective date and December 31, 2014, to create and include an economic development plan for the zone and a schedule for implementation of new or expanded services, facilities, or improvements.
- Requires that at least 50% of any income tax revenue generated within a municipal-township ("alternative") JEDZ be used for the new or expanded services, facilities, or improvements until they have been completed.
- Requires subdivisions that enter into or substantially amend a JEDZ contract between the bill's effective date and December 31, 2014, to create a review council to evaluate the JEDZ's effectiveness, and to approve, and provide recommendations for better implementation of, the economic development plan.
- Requires that the council be composed of the county auditor, owners of the four businesses that employ the most persons within the JEDZ, a person affiliated with an economic development organization, and a member of the public.
- Requires the council to hold at least three public meetings each year, to prepare a report evaluating the effectiveness of the JEDZ and compliance with the economic development plan, and to submit the report to each subdivision participating in the JEDZ.

- Authorizes two or more owners or employees of businesses operating within the JEDZ to bring a civil action in the common pleas court for termination of the JEDZ or suspension of the JEDZ income tax if the council finds noncompliance with the economic development plan or implementation schedule.

- Requires subdivisions participating in an alternative JEDZ to phase out the income tax as quickly as possible if the court determines that the tax is not in the best interests of the JEDZ.

- Requires subdivisions participating in a municipal-only JEDZ to implement a plan to terminate the JEDZ contract as expediently as possible if the court determines that continuation of the contract is not in the best interests of the JEDZ.

CONTENT AND OPERATION

JEDZ overview

Joint economic development zones (JEDZs) are territorial regions created by two or more municipal corporations, or one or more municipal corporations and one or more townships, to "facilitate new or expanded growth for commercial or economic development in the state."[1]

There are two statutory procedures for creating a JEDZ. The "municipal-only" procedure is available only to municipal corporations. Municipal-only JEDZs are governed by the municipal corporations that are parties to the JEDZ contract. The contract must specify the contributions that each contracting municipal corporation will make to the JEDZ. The contributions may include the provision of services, money, or equipment. The municipal corporation in which a municipal-only JEDZ is located may levy an income tax within the JEDZ. However, the creation of a municipal-only JEDZ does not empower the contracting municipal corporations to levy an income tax in an unincorporated area or levy an income tax within the JEDZ at a different rate than is levied throughout the rest of the municipal corporation.[2]

The "alternative" JEDZ procedure applies to combinations of townships and municipal corporations. Alternative JEDZs are governed by a board of directors appointed by the contracting subdivisions. As with the "municipal-only" JEDZ, the contracting subdivisions may contribute services, money, or equipment to the "alternative" JEDZ. In addition, the board of directors of the JEDZ may levy an income tax within the JEDZ, including unincorporated township territory, at a rate not

[1] R.C. 715.69(B).

[2] R.C. 715.69.

exceeding the highest rate levied by a municipal corporation that is a party to the JEDZ contract.[3]

Prohibition of future JEDZs

The bill terminates, effective January 1, 2015, the authority of municipal corporations and townships to create a new JEDZ or substantially amend an existing JEDZ. This prohibition applies to both municipal-only JEDZs and alternative JEDZs. However, it does not eliminate JEDZs created on or before December 31, 2014. Since there is no statutory limit on the duration of a JEDZ contract, an existing JEDZ could continue to operate for an indefinite period of time so long as the contract does not require substantial amendment.[4]

For the purposes of the bill, a "substantial amendment" is any change to the JEDZ contract that increases the rate of municipal income tax that may be imposed within the zone, changes the purposes for which municipal income tax may be used, adds one or more subdivisions to the JEDZ contract, or changes the area or areas included within the zone. Other changes to the contract, such as those pertaining to the composition of a board of directors or to the contributions of the contracting subdivisions, do not invoke the bill's restrictions.[5]

Requirements for newly created or amended JEDZs

The bill imposes several new procedural requirements for subdivisions entering into or substantially amending a JEDZ contract between the bill's effective date and December 31, 2014 (the bill's cutoff date for creating or substantially amending a JEDZ contract). Unless otherwise noted, the bill's requirements apply to both municipal-only JEDZs and alternative JEDZs.

Economic development plan

The bill requires each JEDZ contract to include an economic development plan for the zone created by the contract. The economic development plan must include a schedule for the implementation or provision of any new, expanded, or additional services, facilities, or improvements within the JEDZ or the area surrounding the JEDZ.[6]

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[3] R.C. 715.691.

[4] R.C. 715.69(B) and (J) and 715.691(B) and (K).

[5] R.C. 715.69(A)(5), 715.691(A)(3), and 715.692(A)(8).

[6] R.C. 715.69(C) and 715.691(C).

The economic development plan is subject to the approval of the joint economic development review council for the JEDZ (see below).[7]

Current law requires such an economic development plan to be available for public inspection before the JEDZ is created but does not expressly call for the plan to be incorporated into the contract.

Use of income tax revenue

The bill requires the board of directors of an alternative JEDZ to use at least 50% of the income tax revenue derived from the JEDZ to provide the new, expanded, or additional services, facilities, or improvements specified in the economic development plan. This limitation on revenue use applies until all of the services, facilities, or improvements have been completed as specified in the economic development plan.[8] The limitation does not apply to the municipal-only procedure because any income tax within such a JEDZ is levied pursuant to municipal home rule powers and not pursuant to JEDZ law.

Current law does not expressly require any of the income tax revenue to be used to fulfill the economic development plan.

Creation of a joint economic development review council

The bill requires the creation of a seven-member joint economic development review council for the purposes of approving each JEDZ economic development plan, evaluating the effectiveness of the JEDZ, and providing recommendations to the contracting subdivisions for better implementation of the economic development plan. The council must be created before the contracting subdivisions adopt a resolution approving the JEDZ contract or the substantial amendment to the JEDZ contract.[9]

Composition of the council

The joint economic development review council is to be chaired by the county auditor of the county in which the largest portion of the territory of the JEDZ is located. The auditor serves an indefinite term until the council is dissolved or the territory of the JEDZ is reconfigured in such a way that a different county contains the largest portion of the territory of the JEDZ.[10]

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[7] R.C. 715.692(D).

[8] R.C. 715.691(H).

[9] R.C. 715.692(B).

[10] R.C. 715.692(C)(1).

The other six members of the council are appointed by the contracting subdivisions. One of the appointed members must be an individual affiliated with an economic development organization that provides services for, or advocates on behalf of, businesses operating within the JEDZ. (A business "operates within" the JEDZ if the net profits of the business or the income of employees of the business would be subject to an income tax levied within the JEDZ.) If there are no businesses operating within the JEDZ, the appointee must represent an economic development organization that provides services for businesses operating in the area surrounding the JEDZ.[11]

Four of the appointed council members must be owners of businesses operating within the JEDZ or individuals designated by such owners to serve on their behalf. ("Business" includes nonprofit organizations and governments; their "owners" include officers, employees, or agents authorized to act on their behalf.) The contracting subdivisions must first appoint the owners of the four businesses that employ the most persons within the JEDZ. If one or more of these owners is unwilling or unable to serve on the council, the contracting subdivisions must appoint the owner of the business that employs the next most number of persons within the JEDZ, and so on until each of the four positions is filled. No business may have more than one owner or designee serving as a member of the council at the same time.[12]

If there are not enough owners of businesses operating within the JEDZ who will accept an appointment to the council, the contracting subdivisions are required to appoint the record owner of the parcel or parcels with the greatest aggregate assessed value within the JEDZ or an individual designated to serve on the record owner's behalf. If the record owner is unwilling or unable to serve on the council, the contracting subdivisions are required to appoint the record owner of the parcel or parcels with the next greatest aggregate value within the JEDZ, and so on until each of the four positions are filled.[13]

The seventh member of the council must be a member of the public. The contracting subdivisions may appoint this council member in any manner they agree to.[14]

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[11] R.C. 715.692(C)(2)(a).

[12] R.C. 715.692(C)(2)(b).

[13] R.C. 715.692(C)(2)(c).

[14] R.C. 715.692(C)(2)(d).

Terms of office for council members

The term of office for each appointed member of the joint economic development review council is two years. However, members are required to continue in office subsequent to the expiration of the member's term if the member's successor has not yet taken office. An appointed member may serve an unlimited number of consecutive terms if the member continues to meet the qualifications for the position and is so appointed by the contracting subdivisions.[15]

Any member of the council who ceases to meet the qualifications for the position resigns immediately by operation of law. However, an appointed member does not cease to meet the qualifications for membership based solely on the number of the business' employees or the assessed value of the record owner's property in the zone relative to other businesses or record owners.

The contracting subdivisions may remove an appointed council member at any time for malfeasance, misfeasance, or nonfeasance in office.[16]

Duties of the council

The bill requires the joint economic development review council to review the economic development plan proposed by the JEDZ contracting subdivisions before the creation or substantial amendment of the JEDZ. The council must consider the question of whether the economic development plan is "in the best interest of the zone." If the council determines, by majority vote, that the plan is in the best interests of the zone, the plan is approved and the contracting subdivisions are authorized to enact ordinances or resolutions approving the JEDZ contract or the substantial amendment thereto. If the council does not approve the economic development plan, the contracting subdivisions may not create or substantially amend the JEDZ.[17]

The review council is required to prepare an annual report summarizing the following:

- Comments and recommendations provided at the council's public meetings (see below);
- Comments and recommendations of the council on the economic development plan;

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[15] R.C. 715.692(C)(3).

[16] R.C. 715.692(C)(4).

[17] R.C. 715.692(D)(1).

- A determination by the council that the contracting parties have, or have not, complied with the economic development plan and the schedule for its implementation.

The bill requires the council to deliver a copy of the report to each subdivision that is a party to the JEDZ contract. Each subdivision must review the report and take into consideration the council's comments and recommendations, make a copy of the report available for public inspection in its offices, and publish a copy of the report on its website if the subdivision has a website.[18]

Meetings of the council

The bill requires the joint economic development review council to hold at least three public meetings preceding the publication of each annual report. Attendance by the chairperson and at least four of the appointed members of the council constitutes a quorum for the council to conduct business. Each public meeting of the council must allow time for public comment and recommendations on the JEDZ.[19]

Powers of the council

The bill authorizes the joint economic development review council to request from the contracting subdivisions documents and information related to the progress of the JEDZ. The documents may relate to the amount of municipal income tax collected from the JEDZ, the progress in fulfilling the economic development plan, and the progress in providing new, expanded, or additional services, facilities, or improvements within the JEDZ or the area surrounding the JEDZ.[20]

Funding the council

The bill requires the contracting subdivisions to the JEDZ to make appropriations to pay the costs incurred by the joint economic development review council in the exercise of its functions. The costs incurred by the council may not exceed $10,000 in any year.[21]

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[18] R.C. 715.692(E) and (F).

[19] R.C. 715.692(D)(1) and (2).

[20] R.C. 715.692(D)(3).

[21] R.C. 715.692(H).

Sunshine laws

Open meetings and public records laws apply to the joint economic development review council. Members of the council hold a "public office" for the purposes of Ohio ethics laws.[22]

Civil actions by businesses and employees within the JEDZ

The bill authorizes civil actions for the termination of a municipal-only JEDZ contract or the suspension of an alternative JEDZ income tax by certain individuals if the joint economic development review council determines that the contracting subdivisions to the JEDZ have not complied with the economic development plan for the JEDZ or the schedule for its implementation. The action may be brought by two or more persons who are either an owner of a business operating within the JEDZ (including nonprofit organizations and governments) or an employee of such a business who is subject to the municipal income tax imposed within the JEDZ. The proper venue for the action is the court of common pleas of the county in which the majority of the territory of the JEDZ is located.

If the court determines that the continuation of a municipal-only JEDZ contract is not "in the best interests of the zone," the bill requires the court to order the contracting subdivisions to develop and implement a plan to terminate the contract as expediently as possible without violating the terms of bonds or other encumbrances. If the court determines that the continued imposition of a municipal income tax in an alternative JEDZ is not in the best interest of the zone, the bill requires the court to order the contracting subdivisions to develop and implement a plan to phase out the income tax as expediently as possible without violating the terms of bonds or other encumbrances.[23]

HISTORY

ACTION	DATE
Introduced	10-08-13
Reported, H. State & Local Gov't	02-19-14

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[22] R.C. 715.692(B).

[23] R.C. 715.693.