



# Ohio Legislative Service Commission

## Bill Analysis

Bethany Boyd

### H.B. 665

130th General Assembly  
(As Introduced)

Rep. Schuring

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## BILL SUMMARY

- Authorizes a municipal corporation to create, by ordinance, a downtown redevelopment district (DRD) of not more than ten acres in which at least one historic building is being, or will be, rehabilitated.
- Allows the municipal corporation to declare improvements to parcels within the DRD to be a public purpose and exempt from taxation, but not more than 70% of improvements to parcels within a DRD may be exempted.
- Specifies that the tax exemption cannot exceed ten years, except that the exemption may be for up to 30 years if the municipal corporation obtains the approval of the school board of the school district within which the DRD will be located, or pays service payments in lieu of taxes to the school board.
- Requires the ordinance creating the DRD to contain certain information and an economic development plan for the DRD; the ordinance must be heard publicly.
- Authorizes a municipal corporation that has declared an improvement to be a public purpose in the ordinance to require the owner of any property within the DRD to make annual service payments in lieu of taxes.
- Specifies the purposes for which service payments may be used, including to award loans or grants to owners of historic buildings in the DRD.
- Establishes a procedure for the municipal corporation to obtain the approval of a school district to exempt improvements in a DRD from taxation for more than ten years.

- Adds a DRD to the existing economic development programs that permit a legislative authority to negotiate a compensation agreement with school districts and other taxing units and that require the legislative authority to negotiate the agreement under certain circumstances.
- Authorizes the owner of real property within a DRD to enter into a redevelopment charge agreement with the municipal corporation that created the DRD.
- Allows the legislative authority to require the owner of a tax-exempted improvement in a DRD to reimburse local taxing authorities for the amount of real property taxes foregone.
- Details how service payments are to be collected and distributed.
- Specifies the effective and ending date of, and the process for claiming, tax exemptions declared in an ordinance creating a DRD.
- Requires a municipal corporation that grants a tax exemption for property in a DRD to develop certain policies that apply to exemption recipients and to create a tax incentive review council.
- Creates a municipal Downtown Redevelopment District Fund for the deposit and distribution of service payments, redevelopment charges, and other moneys.
- Requires that certain reports be prepared as a result of creating a DRD.
- Applies existing laws to service payments and tax-exempted DRD property.

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## CONTENT AND OPERATION

### Creation and characteristics of a downtown redevelopment district

The bill authorizes a municipal corporation to create a downtown redevelopment district to promote rehabilitation of historic buildings, create jobs, and encourage economic development in commercial and mixed-use commercial and residential areas. A downtown redevelopment district (DRD) cannot be created in areas used exclusively for residential purposes and cannot be utilized for development or redevelopment of residential areas.<sup>1</sup>

The legislative authority of a municipal corporation may create a DRD by adopting an ordinance that declares "improvements" to parcels within the DRD to be a public purpose and exempt from taxation. The legislative authority may make this declaration with respect to more than one parcel. Not more than 70% of improvements to those parcels may be exempted from taxation. An "improvement" is the increase in the assessed value of real property that would first appear on the tax list after the effective date of the ordinance were it not for the exemption granted by the ordinance.<sup>2</sup>

Once an ordinance is adopted, the municipal corporation may file an application for the tax exemption under continuing laws. The exemption is subject to those tax exemption laws, including the law regarding the priority of exemptions, if more than one tax exemption exists for the property, and other requirements for granting exemptions.<sup>3</sup>

The size of the DRD cannot exceed ten acres enclosed by a continuous boundary in which at least one historic building is being, or will be, "rehabilitated," meaning the historic building will be repaired or altered, making possible an efficient use while preserving those portions and features of the building and its site and environment that

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<sup>1</sup> R.C. 5709.45(B).

<sup>2</sup> R.C. 5709.45(A), (B), and (K).

<sup>3</sup> R.C. 5709.911 and 5715.27.



are significant to its historic, architectural, and cultural values. An "historic building" is a building, including its structural components, that is located in Ohio and that either (1) is individually listed on the National Register of Historic Places under the federal Historic Preservation Program (16 U.S.C. 470a), located in a registered historic district, and certified by the state historic preservation officer as being of historic significance to the district, or (2) is individually listed as a historic landmark designated by a local government certified by that officer under the Program.<sup>4</sup>

A DRD may not include a parcel that is or has been exempted from taxation in another DRD, or under a tax increment financing agreement entered into under existing law.<sup>5</sup>

Improvements to parcels located within a DRD may be exempted from taxation for ten years or less, except that the improvements may be exempted from taxation for up to 30 years if (1) the municipal corporation creating the DRD obtains the approval of the board of education of each city, local, and exempted village school district within which the DRD will be located (see "**School district approval to exempt improvements for more than ten years; compensation agreement**," below), or (2) the ordinance creating the DRD specifies that service payments in lieu of taxes must be paid to the city, local, or exempted village, and joint vocational school district or districts in which the DRD is located, in the amount of the taxes that would have been payable to the school district or districts if the improvements had not been exempted from taxation (see "**Service payments in lieu of taxes**," below).<sup>6</sup>

### **Specifications in the ordinance creating the DRD; economic development plan**

A municipal corporation may adopt more than one ordinance creating a DRD, and a single ordinance may create more than one DRD. The DRD ordinance must specify the DRD's boundary, the county treasurer's permanent parcel number associated with each parcel included in the DRD, the parcel or parcels within the DRD that include a historic building that is being or will be rehabilitated, the proposed life of the DRD, and the percentage of improvements to be exempted from taxation.<sup>7</sup>

The ordinance also must contain an economic development plan for the DRD that includes all of the following:

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<sup>4</sup> R.C. 5709.45(A); R.C. 149.311, not in the bill.

<sup>5</sup> R.C. 5709.45(B).

<sup>6</sup> R.C. 5709.45(E).

<sup>7</sup> R.C. 5709.45(B).



(1) A statement describing the principal purposes and goals to be served by creating the DRD;

(2) An explanation of how the municipal corporation will collaborate with businesses and property owners within the DRD to develop strategies for achieving its purposes and goals;

(3) An estimate of the annual amount of service payments, discussed below, that will be collected from owners of real property in the DRD;

(4) A plan for using the service payments to promote economic development and job creation within the DRD.<sup>8</sup>

### **Public hearing on the ordinance**

At least 30 days before adopting an ordinance creating a DRD, the legislative authority of the municipal corporation must conduct a public hearing on the proposed ordinance and the accompanying economic development plan. At least 30 days before the public hearing, the legislative authority must give notice of the public hearing and the proposed ordinance by first class mail to every real property owner whose property is located within the boundaries of the proposed DRD that is the subject of the proposed ordinance.<sup>9</sup>

### **Service payments in lieu of taxes**

The bill authorizes a municipal corporation that has declared an improvement to be a public purpose in the ordinance creating a DRD to require the owner of any structure located on the parcel<sup>10</sup> to make annual service payments in lieu of taxes to the county treasurer on or before the final dates for payment of real property taxes.<sup>11</sup> A DRD works by granting a real property tax exemption in the ordinance with respect to the increase in the assessed valuation of real property resulting from improvements. The property owners may be required to make service payments equal to the amount of taxes that otherwise would have been paid with respect to the exempted improvements. As a result, a DRD creates a flow of revenue back to the municipal corporation that granted the tax exemption, in the amount of taxes that otherwise would have been paid on the improvements.

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<sup>8</sup> R.C. 5709.45(B).

<sup>9</sup> R.C. 5709.45(C).

<sup>10</sup> Perhaps this should read "located within the district" rather than "located on the parcel."

<sup>11</sup> R.C. 5709.46.



## Use of service payments

A municipal corporation may use the revenue derived from the service payments for any of the following purposes:<sup>12</sup>

(1) To finance or support loans, deferred loans, or grants to owners of historic buildings within the DRD. The loans or grants must be awarded upon the condition that the loan or grant amount may be used by the owner only to rehabilitate the historic building. A municipal corporation that awards a loan or grant must develop a plan for tracking the recipient's use of the loan or grant and monitoring the progress of the recipient's rehabilitation project.

(2) To make contributions, which cannot exceed the property tax revenue that would have been generated by 20% of the assessed value of the exempted improvements within the DRD, to (a) the board of directors of a special improvement district<sup>13</sup> or the board of directors of a community improvement corporation<sup>14</sup> in which all or part of a DRD is located, to promote the DRD to potential business patrons, to recruit businesses to relocate or expand to the DRD, and to attract and promote events and activities that generate revenue or enhance public welfare within the DRD, or (b) to a nonprofit corporation,<sup>15</sup> the primary purpose of which is redeveloping historic buildings and historic districts, for use by the nonprofit corporation to rehabilitate a historic building within the DRD or otherwise to promote or enhance the DRD.

(3) If the service payments collected from owners of real property within the DRD in the preceding year exceed the estimate specified in the district's economic development plan, an amount equal to *the excess collections* may be used for the following purposes:

➤ To finance or support loans to owners of one or more buildings located within the DRD that do *not* qualify as historic buildings. These loans are to be awarded upon the condition that the loan amount may be used by the owner only to make repairs and

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<sup>12</sup> R.C. 5709.45(D).

<sup>13</sup> R.C. 1710.14.

<sup>14</sup> R.C. 1724.12.

<sup>15</sup> The bill defines a "nonprofit corporation" as a domestic or foreign corporation that is formed otherwise than for the pecuniary gain or profit of, and whose net earnings or any part of them is not distributable to, its members, directors, officers, or other private persons, except that the payment of reasonable compensation for services rendered and the distribution of assets on dissolution is not pecuniary gain or profit or distribution of net earnings. In a corporation all of whose members are nonprofit corporations, distribution to members does not deprive it of the status of a nonprofit corporation. R.C. 1702.01, not in the bill.

improvements to the building or buildings. The municipal corporation that awards these loans must develop a plan for tracking the recipient's use of the loan and monitoring the progress of the recipient's repairs or improvements.

➤ To finance "public infrastructure improvements"<sup>16</sup> within the DRD. If revenue generated by the DRD will be used to finance public infrastructure improvements, the economic development plan must identify specific projects that are being or will be undertaken within the DRD and describe how the infrastructure improvements will accommodate additional demands on the existing infrastructure within the DRD. A municipal corporation cannot use service payments derived from a DRD to repair or replace police or fire equipment.

Because the bill allows a municipal corporation that creates a DRD to use service payments to finance grants and loans for privately owned historic buildings and other privately owned real property within the DRD, the bill conceivably might violate the Ohio Constitution, Article VIII, Section 6, which prohibits a county, city, town, or township from raising money for, or loaning its credit to, or in aid of, private enterprise (see **COMMENT**, below).

Additional municipal financing of the projects and services described in (1), (2), and (3) above may be provided by any methods that the municipal corporation may otherwise use for financing them. If the municipal corporation issues bonds or notes to finance these projects and services and pledges money from the Municipal Downtown Redevelopment District Fund, discussed below, to pay the interest on and principal of the bonds or notes, the bonds or notes are not subject to the Uniform Public Securities Law.<sup>17</sup>

### **School district approval to exempt improvements for more than ten years; compensation agreement**

The legislative authority of a municipal corporation seeking the approval of a school district to exempt improvements in a DRD from taxation *for more than ten years*

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<sup>16</sup> Under the bill, a "public infrastructure improvement" includes, but is not limited to, public roads and highways; water and sewer lines; environmental remediation; land acquisition, including acquisition in aid of industry, commerce, distribution, or research; demolition, including demolition on private property when determined to be necessary for economic development purposes; stormwater and flood remediation projects, including such projects on private property when determined to be necessary for public health, safety, and welfare; the provision of gas, electric, and communications service facilities, including the provision of gas or electric service facilities owned by nongovernmental entities when such improvements are determined to be necessary for economic development purposes; and the enhancement of public waterways through improvements that allow for greater public access.

<sup>17</sup> R.C. 5709.45(I). The Uniform Public Securities Law is found in R.C. Chapter 133.



must send notice of the proposed ordinance to the school district not later than 45 business days before it intends to adopt the ordinance. The notice must include a copy of the proposed ordinance and indicate the date on which the legislative authority intends to adopt the ordinance.

The board of education of the school district, by resolution adopted by a majority of the board, may do any of the following:

(1) Approve the exemption for the number of years specified in the proposed ordinance;

(2) Disapprove the exemption for a number of years in excess of ten;

(3) Approve the exemption on the condition that the legislative authority and the board of education negotiate an agreement providing for compensation to the school district equal in value to a percentage of the amount of taxes exempted in the 11th and subsequent years of the exemption period, or other mutually agreeable compensation. If this agreement is so negotiated, the legislative authority must compensate all joint vocational school districts within which the DRD is located at the same rate and under the same terms received by the city, local, or exempted village school district.<sup>18</sup>

The board of education must certify the resolution it adopts to the legislative authority not later than 14 days before the date the legislative authority intends to adopt the ordinance as indicated in the notice. If the board of education approves the ordinance or negotiates a mutually acceptable compensation agreement with the legislative authority, the legislative authority may enact the ordinance in its current form. If the board disapproves of the ordinance and fails to negotiate a mutually acceptable compensation agreement with the legislative authority, the legislative authority may exempt improvements to parcels within the DRD for not more than ten years. If the board of education fails to certify a resolution to the legislative authority within the 14-day time period, the legislative authority may adopt the ordinance and may exempt improvements to parcels within the DRD for the period of time specified in the notice delivered to the board. The legislative authority may adopt the ordinance at any time after the board of education certifies its resolution approving the exemption to the legislative authority, or, if the board approves the exemption on the condition that a mutually acceptable compensation agreement be negotiated, at any time after the compensation agreement is agreed to by the board and the legislative authority.<sup>19</sup>

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<sup>18</sup> R.C. 5709.45(F)(1).

<sup>19</sup> R.C. 5709.45(F)(2).



If a board of education has adopted a resolution waiving its right to approve exemptions from taxation and the resolution remains in effect, approval of exemptions by the board is not required. If a board of education has adopted a resolution allowing a legislative authority to deliver the required notice fewer than 45 business days before the legislative authority's adoption of the ordinance, the legislative authority must deliver the notice to the board not later than the number of days before the ordinance is adopted, as prescribed by the board in its resolution. If a board of education adopts a resolution waiving its right to approve agreements or shortening the notification period, the board is required to certify a copy of the resolution to the legislative authority. If the board of education rescinds such a resolution, it must certify notice of the rescission to the legislative authority.<sup>20</sup>

If the legislative authority is not required under the bill to notify the board of education of the legislative authority's intent to create a DRD because, for example, real property in the DRD is exempted from taxation for ten years or less, the legislative authority must comply with the notice requirements imposed under existing law,<sup>21</sup> which requires 14-day notice to the board before the legislative authority enters into an instrument granting a tax exemption, unless the board has adopted a resolution under that existing law waiving its right to receive such a notice.<sup>22</sup>

## **Compensation agreement for revenue foregone due to tax exemption**

### **Permissive negotiation of compensation agreement**

The bill adds a DRD to the list of existing economic development programs under which the legislative authority of a municipal corporation or an owner of property in a DRD that is exempted from taxation may enter into a compensation agreement with school districts and other taxing units. Under continuing law, a legislative authority that exempts property from taxation under certain economic development programs may, but is not required to, negotiate and enter into a compensation agreement with a school district and other taxing units whereby they are compensated for tax revenue foregone as a result of the exemption. A smaller percentage of the foregone tax revenue may be provided if express consent is given in the agreement. Likewise, an owner of property that is exempted from taxation under any of those economic development programs may enter into a compensation agreement with a school district or other taxing unit whereby the owner agrees to

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<sup>20</sup> R.C. 5709.45(F)(3).

<sup>21</sup> R.C. 5709.83.

<sup>22</sup> R.C. 5709.45(F)(4).



compensate the school district or other taxing unit by paying cash or by providing property or services by gift, loan, or otherwise.<sup>23</sup>

### **Circumstances under which negotiation of a compensation agreement is required**

Under continuing law and the bill, the legislative authority of a municipal corporation and the school district *must* attempt to negotiate a compensation agreement that provides compensation to the school district for all or a portion of the foregone tax revenues, if the legislative authority has *not* specified in the ordinance creating a DRD that payments in lieu of taxes are to be paid to a school district in which improvements are located in the amount of foregone real property taxes, and if the municipal corporation imposes an income tax and the payroll of new employees resulting from creating the DRD exceeds \$1 million in any tax year for which the property is exempted. The agreement may include the owner of property exempted in the DRD as a party, and may obligate the owner to compensate the school district.

If the legislative authority and the school district fail to negotiate an agreement within six months after formal approval of the ordinance granting the exemption, the legislative authority must pay to the school district an amount equal to 50% of the difference between the amount of taxes levied and collected by the municipal corporation on the incomes of new employees in the calendar year ending on the day the payment is required to be made, and the amount of any infrastructure costs (limited by continuing law) incurred in that calendar year.<sup>24</sup>

### **Redevelopment charge agreement**

The owner of real property located in a DRD may enter into an agreement with the municipal corporation that created the DRD to impose a redevelopment charge on the property. The agreement must include all of the following:<sup>25</sup>

(1) The amount of the redevelopment charge, which may be a fixed dollar amount or an amount determined on the basis of the assessed valuation of the property, or all or part of the profits, gross receipts, or other revenues of a business operating on the property, including rentals received from leases of the property.

(2) The termination date of the redevelopment charge. The redevelopment charge cannot be charged after the expiration or termination of the DRD.

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<sup>23</sup> R.C. 5709.82.

<sup>24</sup> R.C. 5709.82(C) and (D).

<sup>25</sup> R.C. 5709.45(L).



(3) The terms by which the municipal corporation must collect the redevelopment charge.

(4) The purposes for which the redevelopment charge may be used by the municipal corporation, which are limited to those purposes described in "**Use of service payments**," above. The redevelopment charge agreement may specify any or all of those purposes.

Redevelopment charges collected by a municipal corporation must be deposited to the Municipal Downtown Redevelopment District Fund, discussed below.

A redevelopment charge agreement is deemed to be a covenant running with the land. The covenant is fully binding on behalf of and enforceable by the municipal corporation against any person acquiring an interest in the land and all of that person's successors and assigns.

No purchase agreement for real estate or any interest in real estate upon which a redevelopment charge is levied is enforceable by the seller or binding upon the purchaser unless the purchase agreement specifically refers to the redevelopment charge. If a conveyance of, or interest in, such real estate is made pursuant to a purchase agreement that does refer to the redevelopment charge, the charge continues to be a covenant running with the land fully binding on behalf of and enforceable by the municipal corporation against the person accepting the conveyance pursuant to the purchase agreement.

If a redevelopment charge is not paid when due, the overdue amount must be collected according to the agreement's terms. If the agreement does not specify a procedure for collecting overdue redevelopment charges, the municipal corporation may certify the charge to the county auditor. The county auditor must enter the unpaid charge on the real property tax list and duplicate opposite the parcel against which it is charged and certify the charge to the county treasurer. The unpaid redevelopment charge is a lien on property against which it is charged from the date the charge is entered on the tax list, and is to be collected in the manner provided for the collection of real property taxes. Once the charge is collected, it must be paid immediately to the municipal corporation.<sup>26</sup>

### **Possible reimbursement of local taxing authorities**

The legislative authority of a municipal corporation granting an exemption from taxation for an improvement in a DRD may require the owner of the improvement to

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<sup>26</sup> R.C. 5709.45(L).

reimburse the local taxing authorities within whose taxing jurisdiction the exempted improvement is located for the amount of real property taxes foregone.<sup>27</sup>

### **Collection and distribution of service payments**

If annual service payments in lieu of taxes are required, the service payments must be charged and collected in the same manner and in the same amount as the real property taxes that would have been charged and payable against an improvement if it were not exempt from taxation. In addition, service payments must be treated in the same manner as taxes for all purposes of the lien of the state for real property taxes, and attaches to the property and continues until paid.<sup>28</sup> If any reduction in the levies otherwise applicable to such exempt property is made by the county budget commission, the amount of the service payment must be calculated as if such reduction in levies had not been made.<sup>29</sup>

Moneys collected as service payments in lieu of taxes must be distributed at the same time and in the same manner as real property tax payments. However, subject to the county auditor's calculation of the percentage of improvements in the DRD to be exempted from taxation, the entire amount so collected must be distributed to the municipal corporation in which the improvement is located. If an ordinance establishing the DRD specifies that service payments must be paid to the city, local, or exempted village school district in which the improvements are located, the county treasurer must distribute the portion of the service payments to that school district in an amount equal to the property tax payments the school district would have received from the portion of the improvements exempted from taxation had the improvements not been exempted, as directed in the ordinance. The county treasurer must maintain a record of the service payments made from property in each municipal corporation.

The county treasurer must distribute to the appropriate taxing authorities the portion of the service payments that represents service payments required to be paid to the city, local, or exempted village, or joint vocational school district in which a DRD is located, or payments required under a compensation agreement.

Nothing in the DRD laws affect the taxes levied against that portion of the value of any parcel of property that is not exempt from taxation.<sup>30</sup>

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<sup>27</sup> R.C. 5709.831.

<sup>28</sup> R.C. 5709.91.

<sup>29</sup> R.C. 5709.46.

<sup>30</sup> R.C. 5709.46.

## Effective and ending date of, and process for claiming, tax exemptions

The bill requires that a tax exemption declared in an ordinance creating a DRD commences with the tax year specified in the ordinance so long as the specified tax year commences after the ordinance's effective date. If the ordinance specifies a tax year commencing before the ordinance's effective date or specifies no tax year whatsoever, the exemption commences with the tax year in which an exempted improvement first appears on the tax list and that begins after the ordinance's effective date. In lieu of stating a specific year, the ordinance may provide that the exemption commences in the tax year in which the value of an improvement exceeds a specified amount or in which the construction of one or more improvements is completed, provided that such tax year begins after the ordinance's effective date.

Exemptions must be claimed and allowed in the same manner as in the case of other real property exemptions. If an exemption status changes during a year, the procedure for the apportionment of the taxes for that year is the same as in the case of other changes in tax exemption status during the year.

The exemption ends on the date specified in the ordinance as the date the improvement ceases to be a public purpose or the DRD expires, whichever occurs first; except that, the exemption of an improvement within a DRD may end on a later date, as specified in the ordinance, if the legislative authority and the board of education of the city, local, or exempted village school district within which the DRD is located have entered into a permissive compensation agreement under continuing law (discussed above),<sup>31</sup> with respect to the improvement, and the board of education has approved the term of the exemption, but the improvement cannot be exempted from taxation for more than 30 years.<sup>32</sup>

When property owned by a nonprofit corporation that is a charitable or educational institution is receiving this tax exemption and the property is sold, existing law requires that the property be restored to the tax list and that a recoupment charge be paid. The bill provides that a recoupment charge does not have to be remitted for the year such property is restored to the tax list.<sup>33</sup>

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<sup>31</sup> R.C. 5709.82.

<sup>32</sup> R.C. 5709.45(H).

<sup>33</sup> R.C. 5709.12.



## Other requirements for a DRD

The bill requires the legislative authority of a municipal corporation that grants an exemption from taxation for property in a DRD to do the following, which is required for other existing, similar economic development programs:

(1) Develop policies to ensure that the exemption recipient practices nondiscriminatory hiring in its operations.<sup>34</sup>

(2) Create a tax incentive review council to review agreements granting property tax exemptions resulting from the declaration of public purpose improvements in the ordinance creating the DRD. The council also must review the compliance of each recipient of a tax exemption with the policies in (1), above. As under continuing law, the council may request any information from the recipient of a DRD tax exemption that is necessary for the council to perform its review.<sup>35</sup>

## Municipal Downtown Redevelopment District Fund

A municipal corporation that grants a tax exemption or enters into a redevelopment charge agreement under the bill must establish a Municipal Downtown Redevelopment District Fund into which to deposit service payments in lieu of taxes distributed to the municipal corporation and redevelopment charges collected pursuant to an agreement between the owner of real property located in a DRD and the municipal corporation. If an enabling ordinance or a redevelopment charge agreement authorizes the use of service payments or redevelopment charges for more than one of the purposes described above in "**Use of service payments**," the municipal corporation must establish separate accounts for the service payments and redevelopment charges designated for each such purpose. Money in an account of the Fund must be used for the purposes described in the ordinance creating the DRD and the redevelopment charge agreements. The municipal corporation also may deposit into any of those accounts municipal income tax revenue that has been designated by ordinance to finance the public infrastructure improvements.

A municipal corporation may distribute money in the Fund to any school district in which the exempt property is located, in an amount not to exceed the amount of real property taxes that such school district would have received from the improvement if it were not exempt from taxation, or use money in the Fund to finance specific public improvements benefiting the school district. The resolution or ordinance establishing the fund must set forth the percentage of such maximum amount that will be

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<sup>34</sup> R.C. 5709.832.

<sup>35</sup> R.C. 5709.85.



distributed to any affected school district or used to finance specific public improvements benefiting the school district.<sup>36</sup>

A municipal corporation also may distribute money in the Fund to a county in accordance with existing law that requires a county auditor, after a sexennial reappraisal or triennial update, to calculate the portion of the service payments in lieu of taxes that must be distributed to the county treasury to the credit of the county general fund.<sup>37</sup>

Any incidental surplus remaining in the Fund, upon dissolution of the account or Fund, must be transferred to the municipal corporation's general fund.<sup>38</sup>

## Reports

Not later than 15 days after a municipal corporation adopts an ordinance creating a DRD, the municipal corporation must submit a copy of the ordinance to the Director of Development Services. On or before March 31 of each year, the municipal corporation must submit a status report to the Director, which must indicate, in the manner prescribed by the Director, the progress of the projects and services during each year that an exemption remains in effect, including a summary of the receipts from service payments in lieu of taxes; expenditures of money from the Municipal Downtown Redevelopment District Fund; a description of the projects and services financed with such expenditures; and a quantitative summary of changes in employment and private investment resulting from each project and service.<sup>39</sup>

The board of directors of a special improvement district or of a community improvement corporation must periodically report to the legislative authority of the municipal corporation on the expenditure of any contributions of revenues derived from service payments it receives from a municipal corporation, and plans for the utilization of future contributions. If any contributions received by the special improvement district or community improvement corporation remain after the dissolution or expiration of the DRD, its board of directors must pay the remaining amount to the contributing municipal corporation, which must credit the money to its general fund.<sup>40</sup>

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<sup>36</sup> R.C. 5709.47.

<sup>37</sup> R.C. 5709.47(B) and 5709.913.

<sup>38</sup> R.C. 5709.47(C).

<sup>39</sup> R.C. 5709.45(J).

<sup>40</sup> R.C. 1710.14 and 1724.12.



## **Application of other laws to service payments and tax-exempted DRD property**

### **Payments required for certain special tax levies**

If service payments in lieu of taxes are provided pursuant to an ordinance creating a DRD, the bill specifies that the service payments that are attributable to any amount by which the effective tax rate of either a renewal levy with an increase or a replacement levy exceeds the effective tax rate of the levy renewed or replaced, or that are attributable to an additional levy, must be paid to a taxing authority that levies the following special tax levies: for community mental retardation and developmental disabilities programs and services; senior citizens services or facilities; county hospitals; alcohol, drug addiction, and mental health services or facilities; public libraries; children services and the placement and care of children; the provision of zoo services and facilities and their maintenance; township park districts; parks and recreational purposes of joint recreation districts; park district purposes; making appropriations for public assistance, human or social services, public relief, public welfare, public health and hospitalization, and support of general hospitals; and general health district programs. These payments are required with respect to any of the above special levies authorized by the voters on or after January 1, 2006, and the amount paid must be equal to the amount of taxes from that additional levy or from the increase in the effective tax rate of such renewal or replacement levy that would have been payable to the taxing authority were it not for the tax exemption authorized by the bill.<sup>41</sup>

### **Significant economic development project annexations**

The bill excludes service payments from being used to meet private real and personal property investment dollar thresholds for purposes of annexing land into a municipal corporation to undertake a significant economic development project.<sup>42</sup>

### **Net indebtedness**

Municipal corporations are prohibited from incurring net indebtedness that exceeds 10.5% of their tax valuation, without voter approval. The bill excludes from the calculation of a municipal corporation's net indebtedness that percentage of the principal amount of general obligation bonds issued by the municipal corporation equal to the percentage of the debt charges on those securities that can be paid from service payments in lieu of taxes made under the DRD law. However, under continuing law,

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<sup>41</sup> R.C. 5709.45(G).

<sup>42</sup> R.C. 709.024.



the amount excluded cannot exceed the lesser of \$30 million or 1.1% of the municipal corporation's tax valuation.<sup>43</sup>

Continuing law authorizes a school district, with the consent of the Superintendent of Public Instruction, to incur without voter approval net indebtedness that exceeds amounts specified in the Uniform Public Securities Law to pay the costs of permanent improvements if certain conditions are satisfied. One condition is if the school district's fiscal officer estimates that payments made pursuant to certain agreements or distributions are sufficient to pay debt charges on bonds. The bill adds to this condition service payments or compensation under a negotiated agreement paid to a school district located in a DRD, and any money a municipal corporation decides to give to the school district from the Municipal Downtown Redevelopment District Fund.<sup>44</sup>

### **Payments to a township due to annexation**

If, under existing law,<sup>45</sup> unincorporated territory is annexed to a municipal corporation to conform boundaries and the territory is excluded from a township, continuing law requires the municipal corporation to make certain payments to the township for the loss of property taxes. The bill prohibits a reduction in the payments owed to the township if the municipal corporation has granted a tax exemption under the DRD law.<sup>46</sup>

### **School Foundation Program**

The bill excludes the value of real property in a school district that is exempted from taxation because the property is in a DRD when the Tax Commissioner is valuing real property in the school district for purpose of computing funding under the School Foundation Program.<sup>47</sup>

### **Transportation facilities**

Under the bill, a municipal corporation may use service payments in lieu of taxes credited to the Municipal Downtown Redevelopment District Fund to provide its

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<sup>43</sup> R.C. 133.04.

<sup>44</sup> R.C. 133.06, 5709.45, and 5709.47(B).

<sup>45</sup> R.C. 503.07, not in the bill.

<sup>46</sup> R.C. 709.19.

<sup>47</sup> R.C. 3317.021.



contributions to the cost of constructing a transportation facility under a lease or lease-purchase agreement with the Director of Transportation.<sup>48</sup>

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## COMMENT

The bill allows a municipal corporation that created a DRD to use payments in lieu of taxes to finance grants and loans to private owners of historic buildings and other private buildings within the DRD. This could be judicially interpreted or applied by the municipal corporation in a manner that violates Ohio Constitution, Article VIII, Section 6, which prohibits a county, city, town, or township from "rais[ing] money for, . . . or loan[ing] its credit to, or in aid of," private enterprise. The Ohio Supreme Court has found that the Constitution generally prohibits "private interests from tapping into public funds at the taxpayer's expense," regardless of direct or indirect public benefits arising from government investment in a private enterprise.<sup>49</sup> However, Ohio Constitution, Article VIII, Sections 13 and 16, explicitly permit public expenditures in private enterprises that enhance the availability of adequate housing, or create or preserve jobs and employment opportunities by investing in industry, commerce, distribution, and research. The Court has upheld expenditures by the state and its subdivisions for private enterprise if the expenditures are undertaken for "public welfare" and not to "subsidize commerce or industry."<sup>50</sup>

Courts might perceive municipal investment in privately owned historic buildings and other private property as a subsidy of private enterprise rather than a public welfare expenditure. Because DRDs are intended for commercial development and not residential development, the subsidy is not likely protected by the housing exception. So it appears that the private investment of DRD revenue is likely to be permissible only if the investment is in industry, commerce, distribution, or research and will create or preserve jobs and employment opportunities.<sup>51</sup>

Projects contemplated by the bill may qualify as proper public purposes under the criteria of Article VIII, Section 13. But the bill also grants municipal corporations leeway to finance private projects that are outside the scope of industry, commerce, distribution, or research, or that will not create or preserve jobs. Those expenditures might conflict with Article VIII, Section 6.

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<sup>48</sup> R.C. 5501.311.

<sup>49</sup> *C.I.V.I.C. Group v. City of Warren*, 88 Ohio St.3d 37, 40 (2000).

<sup>50</sup> *State ex rel. Tomino v. Brown*, 47 Ohio St.3d 119, 122 (1989).

<sup>51</sup> *See County of Stark v. Ferguson*, 2 Ohio App. 3d 72, 77 (Ohio Ct. App., Stark County 1981).



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## HISTORY

ACTION

DATE

Introduced

11-12-14

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