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S.B. 33*
134th General Assembly

Bill Analysis

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Version: As Reported by House Ways & Means

Primary Sponsors: Sens. Hottinger and Brenner

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SUMMARY

Community reinvestment areas

- Extends the authority to designate a community investment area (CRA) to townships that have adopted a limited home rule government.
- Eliminates the requirement for the Department of Development to approve a proposed CRA.
- Requires the Department to prescribe a model CRA exemption agreement between owners of a commercial or industrial project and local authorities.
- Increases, from 50% to 75%, the percentage of a proposed CRA exemption for a commercial or industrial project that requires obtaining permission from a school district encompassing the project.
- Modifies the requirement that municipalities share municipal income tax revenue generated by new employees at a large CRA commercial or industrial project with the school district encompassing that project.
- Reduces, from five to three years, the amount of time required to transpire between the discontinuation of a CRA commercial or industrial project and when the project's owner may obtain an enterprise zone tax exemption or another CRA exemption.
- Modifies the recipients of and the information appearing in a required annual report issued by local authorities detailing CRA commercial and industrial projects.

* This analysis was prepared before the report of the House Ways & Means Committee appeared in the House Journal. Note that the legislative history may be incomplete.

- Eliminates fees paid by CRA commercial and industrial project owners to the local authority and the Department of Development to cover the cost of administering such projects.
- Requires the Department to publish on its website the locations of each CRA, as well as all commercial and industrial project exemption agreements.

Education savings plan income tax deduction

- Expands the income tax deduction allowed for contributions to Ohio's 529 education savings program to include contributions to 529 programs established by other states.

DETAILED ANALYSIS

Community reinvestment areas

Overview

Continuing law allows a county or municipality to designate community reinvestment areas (CRAs) where residential, commercial, or industrial development projects may be exempted from property tax for a certain amount of time. First enacted 50 years ago,¹ this economic development program was significantly updated in 1994, in S.B. 19 of the 120th General Assembly, which set forth much of the current CRA law governing most CRAs today. However, some existing CRAs continue to be governed by law enacted prior to S.B. 19 under an ongoing grandfathering provision.

This bill modifies, as follows, the law governing CRAs, and the terms under which property may be exempted in such areas. In some cases, these changes restore the guidelines that govern grandfathered pre-S.B. 19 CRAs.

Limited home rule townships

The bill extends the authority to designate CRAs to townships that have adopted limited home rule governments. Such a township may designate CRAs within its unincorporated territory. In general, a township may become a limited home rule township, which grants it additional powers, if it has a township administrator, a population of at least 2,500 in its unincorporated territory, and a budget of at least \$3.5 million. In some instances, voters must also approve its formation.²

Under continuing law, a county may designate a CRA in any unincorporated territory within the county, including unincorporated territory within a limited home rule township. Under the bill, a county may not include in a CRA any territory that is already part of a CRA

¹ H.B. 754 of the 108th General Assembly.

² R.C. 504.01, not in the bill.

designated by a limited home rule township. Likewise, a limited home rule township may not include in a CRA any territory that is already part of a CRA designated by the county.³

Under continuing law, a municipal corporation may designate a CRA within its incorporated territory.

State approval of CRAs

The bill eliminates the requirement that the Director of Development approve the creation of a CRA proposed by a local authority. (For the purpose of this analysis, a subdivision eligible to create a CRA, i.e., a county, municipality, or limited home rule township or, under current law, a county or municipality, is referred to as a “local authority.”) Under continuing law, before designating a CRA, a local authority is required first to “survey” any housing located within an area where a new CRA was being proposed, and then to adopt a resolution finding that the proposed area is one in which housing is located, but that new housing, or the repair of existing housing stock, is discouraged. Then the local authority must send this resolution and a map of the proposed CRA to the Director of Development to confirm these findings, and, under current law, no CRA exemption may be granted until the Director does so. In contrast, pre-S.B. 19 CRA law required only that the local authority send a copy of the resolution and map of the CRA to the Department of Development, and no departmental approval was required.

The bill eliminates the requirement that the Department approve the creation of a new CRA, essentially reviving pre-S.B. 19 CRA law under which a local authority must send the Department a copy of the resolution and map of the CRA area, but is not required to obtain its approval.⁴

Exemption agreements for commercial/industrial property

CRA exemptions may apply to remodeling of at least \$2,500 for single- and double-family housing; remodeling of at least \$5,000 for multifamily housing or commercial or industrial structures; and new construction of residential, commercial, and industrial structures. Under continuing law, CRA exemption procedures differ depending upon whether the exemption is sought for residential projects or commercial and industrial projects. Specifically, the percentage of the exemption for residential property, up to 100%, must be uniform and specified in the resolution designating the CRA. But an exemption percentage for commercial or industrial property may vary and is set in accordance with a formal agreement entered into between the local authority and the property owner. While residential property owners are able to obtain an exemption from an officer designated by the local authority, called the housing officer, commercial and industrial property owners are required first to enter into this formal exemption agreement.

³ R.C. 3735.65, 3735.66, 3735.672, 3735.673, 3735.68, 3735.69, and 5709.85.

⁴ R.C. 3735.66.

Current law prescribes the specific terms that must be included in these agreements, which include, for example, not only a description of the project and its owner, but also terms related to enforcement of the agreement, the duties of each party, and the economic development metrics imposed on the project's owner. Instead of requiring the inclusion of these specific terms in every agreement, the bill authorizes the Department of Development to create, by rule, a model agreement. Local authorities may use this model agreement or they may create their own CRA agreements, but any such agreement must include the terms and statements required specifically by law to be included in the model agreement, as described below. Any additional terms of a CRA agreement that are not included in the model agreement must not conflict with CRA law. Although the Department may include in the model agreement any terms it considers necessary, the model agreement must at least include the following terms, which are required to be included in any CRA agreement and many of which are required to be included in each agreement in some form under current law:

- A description of the exempted property and the property's owner.
- The exemption percentage and the period for which the exemption is granted.
- A requirement that the owner pay any unexempted property taxes and that the agreement be rescinded if the owner does not. Current law imposes a similar requirement.
- A requirement that the owner, at the time the agreement is executed, not owe any delinquent property or state taxes. Current law imposes a similar requirement.
- A prohibition on transferring the agreement to a new owner without the local authority's approval. Current law imposes a similar prohibition.
- A requirement that the owner provide the property tax incentive review council – a local body charged with reviewing locally granted economic tax exemptions such as CRAs – with any information it requires to evaluate the applicant's agreement compliance. Current law imposes a similar requirement.
- A description of the circumstances under which an agreement may be revoked by the local authority for noncompliance and the manner for recovering already-received benefits. Similar information is required to be included under current law.
- A requirement that the owner provide an estimate of the number of jobs that will be created and retained due to the project, as well as the payroll attributable to those jobs. Similar information is required to be included under current law.

Several terms that must be included in each agreement under current law, including those related to duties of the local authority and enforcement of the agreement, are not

required to be included in the model agreement. Once the Department prescribes the model agreement, it may only alter its contents through the rulemaking process.⁵

School board approval

The bill increases the percentage of a CRA commercial or industrial project that may be exempted from taxation without obtaining the approval of the board of the school district that encompasses the CRA. Under current law, if an agreement granting CRA exemption to a commercial or industrial project proposes to exempt more than 50% of the project's value, the agreement must first be approved by the board of education of the school district in which the project would be located. However, no permission is required if the board adopts a resolution waiving its right to approve such agreements or if the district is compensated by the local authority or the project owner in an amount that would hold the district harmless for excess revenue forgone as a result of the exemption percentage equaling or exceeding that 50% threshold.

The bill increases the threshold exemption percentage that triggers the requirement of school board approval from 50% to 75%. Permission continues to not be required if the board of education adopts a resolution waiving its rights to approve such an exemption. In addition, approval is not required if the agreement holds the district harmless for excess revenue it forgoes as a result of the exemption percentage exceeding that 75% threshold.⁶

School district compensation

The bill increases the amount of payroll of new employees involved with a CRA commercial or industrial project that triggers a requirement under continuing law that a municipality provide annual compensation to the school district. Under current law, if the CRA project results in a new employee payroll of at least \$1 million in any year and the municipality is unable to negotiate a voluntary compensation agreement with the school board, then the municipality is required to make annual payments to the school board equal to 50% of the difference of the amount of municipal income taxes collected from new employees involved in the project minus infrastructure costs the municipality incurs for the benefit of the project. This compensation requirement applies not only to CRA exemptions for commercial and industrial projects but to other property tax abatements, such as enterprise zone exemptions. (An enterprise zone exemption, similar to a CRA exemption, is a property tax exemption granted by local authorities to commercial and industrial projects that locate in certain areas.⁷)

The bill increases the new employee payroll threshold applicable to CRA commercial and industrial projects to \$2 million. The \$1 million threshold continues to apply for non-CRA property tax abatements. The bill also indexes the \$2 million CRA threshold for inflation. The Department of Development calculates the new threshold amount annually by multiplying the

⁵ R.C. 3735.671(A) and (B).

⁶ R.C. 3735.671(A) and 3735.67(A).

⁷ R.C. 5709.62, 5709.63, and 5709.632, not in the bill.

current threshold by the percentage increase, if any, in the gross domestic product (GDP) over the preceding year and adding that result to the current threshold. After making this calculation, the Department must certify the new threshold amount to each municipal corporation that designates at least one CRA.⁸

Project discontinuation or relocation

The bill modifies the consequences if a commercial or industrial project discontinues or relocates its operations in a CRA before the CRA exemption term ends. Under current law, if the owner of a commercial or industrial project subject to a CRA exemption discontinues its operation before the end of the CRA's term, that owner, as well as any of its successors or related entities, are ineligible to receive another CRA exemption or an enterprise zone exemption for five years following that discontinuance. The bill reduces the amount of time required to transpire between the discontinuation of a project and when that party may qualify for another CRA exemption or enterprise zone exemption from five to three years.⁹ No such penalty was imposed under pre-S.B. 19 CRA law.

Annual report

Current law requires a local authority to submit an annual report to the Department of Development, as well as each school district with territory in the CRA, by March 31. The report must contain details on each exemption agreement entered into with an industrial or commercial project. If the annual report is not submitted by the deadline, continuing law bars the local authority from approving additional CRA exemptions and authorizes the state to withhold Local Government Fund and property tax payments owed to the local authority.

The bill removes the requirement that the report be submitted to school districts and modifies the required content of the report as follows:

- The current report must identify each CRA designated by the local authority by an identification number assigned by the Department. The revised report instead requires identifying the total number of designated CRAs. (Both reports must identify the population of each CRA.)
- The current report must identify the total number of agreements for commercial and industrial projects in each CRA, including the project's full-time employees and industrial identification code, and the unemployment rate in the local authority in each year since the CRA was designated. The revised report is only required to identify the number of parcels subject to a CRA exemption.
- The current report must report certain information about these exemption agreements, such as how many were entered into during the year, how many are still in effect, when each expires, and the amount of taxes exempted under each. The revised report

⁸ R.C. 5709.82(C) to (E).

⁹ R.C. 3735.671(E).

requires similar information, but arranged according to each parcel of exempted commercial or industrial property.

- The current report must include the result of any compliance review conducted on these exemption agreements by the tax incentive review council, including whether or not the project has met hiring, retention, and payroll targets, whether the agreement has been rescinded, or whether the council recommends changes to the agreement. The revised report requires the reporting of such information only if those targets are part of an exemption agreement, and only if those targets were not met. Agreement rescissions and council recommendations are no longer required to be reported.
- The revised report no longer requires reporting which CRA commercial and industrial projects have expanded their hiring or retention targets.
- The revised report no longer requires reporting the amount of taxes forgone by each project or the increase in a project's employment after the CRA exemption begins to apply.¹⁰

The bill also removes a separate requirement for a local authority to specially notify the Department of changes in zoning restrictions within a CRA. Instead, this information must be included in the annual report.¹¹ In addition, while current law requires a local authority to immediately forward a copy of any CRA agreement for commercial and industrial projects to the Department, the bill instead allows the local authority to submit these agreements to the Department at the same time as the annual report.¹²

Fees

The bill no longer requires the owner of a commercial or industrial project subject to a CRA agreement to pay the following fees, which are required under current law:

- An annual fee of up to the lesser of \$2,500 or 1% of the amount of exempted tax to the local authority to administer and enforce the terms of the agreement.
- A one-time application fee in an amount set by the Department of Development to apply toward its costs to administer the CRA program and other tax incentives.¹³

Neither fee was charged under pre-S.B. 19 CRA law.

CRA website information

The bill requires the Department of Development to publish and annually update on its website the locations of each CRA within the state, as well as copies of the resolution

¹⁰ R.C. 3735.672(A).

¹¹ R.C. 3735.66 and 3735.672(A)(5).

¹² R.C. 3735.671(F) and 3735.672(A)(6).

¹³ R.C. 3735.671(D) and 3735.672(C).

authorizing the CRA and the exemption agreement for each commercial or industrial project.¹⁴ Currently, the Department does maintain such a website, though current law does not specifically require it to do so.¹⁵

Education savings plan income tax deduction

Federal law authorizes states and educational institutions to operate tax-preferred education savings programs, known as “qualified tuition programs” or “529 plans.” The state of Ohio currently offers such a plan, under which individuals may contribute to an investment account to pay for future post-secondary college or university expenses, as well as expenses for primary and secondary school education. Ohio’s plan is administered by the Ohio Tuition Trust Authority.¹⁶ Earnings from 529 plans are exempt from federal income tax and the Ohio income tax to the extent the earnings are used to pay the qualified education expenses of the plan beneficiary.

Continuing Ohio law allows a state income tax deduction for contributions to Ohio’s 529 plan. The bill extends the deduction so that it would apply as well to contributions to any 529 plan established by another state or by an educational institution. As under current law, the deduction would be limited to \$4,000 per beneficiary per year for the taxpayer or the taxpayer and the taxpayer’s spouse, regardless of whether the taxpayer and spouse file separate returns or a joint return; annual contributions in excess of \$4,000 per beneficiary may be deducted in ensuing years, subject to the annual \$4,000 limit.

The extended deduction applies to taxable years beginning in 2023 or thereafter.¹⁷

HISTORY

Action	Date
Introduced	02-02-21
Reported, S. Ways & Means	11-16-22
Passed Senate (32-0)	11-16-22
Reported, H. Ways & Means	--

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¹⁴ R.C. 3735.672(C).

¹⁵ The Department of Development, <https://devresearch.ohio.gov/oteisearch/cra/> (last accessed December 14, 2022).

¹⁶ R.C. Chapter 3334. Ohio law also offers a separate college savings program that qualifies as a 529 plan, under which individuals may purchase “tuition units.” However, this plan has been closed to new purchases since December 31, 2003.

¹⁷ R.C. 5747.70, 5747.01(A)(10), and 5747.10; Section 3.