Ohio Legislative Service Commission

Bill Analysis Mackenzie Damon

Sub. H.B. 9*

131st General Assembly
(As Reported by S. Ways and Means)

Reps. Boose, Blessing, Hambley, Hood, Scherer, Sprague, Strahorn, Young, Dever, Driehaus, Rogers, Anielski, Antonio, Ashford, Baker, Barnes, Brown, Buchy, Burkley, Butler, Celebrezze, Cera, Clyde, Conditt, Derickson, Dovilla, Duffey, Fedor, Green, Grossman, Hackett, Hagan, Henne, Hill, Huffman, T. Johnson, Koehler, Kraus, Lepore-Hagan, Maag, McClain, McColley, M. O'Brien, S. O'Brien, Patterson, Perales, Phillips, Ramos, Reineke, Retherford, Rezabek, Romanchuk, Ryan, Schuring, Sears, K. Smith, Stinziano, Sweeney, Sykes, Terhar, Thompson

BILL SUMMARY

- Creates a permanent joint legislative committee of six legislators and the Tax Commissioner or designee thereof to periodically review all existing "tax expenditures."
- Requires the committee to make recommendations to the General Assembly as to the continuation, modification, or repeal of existing tax expenditures.
- Requires any bill proposing a new or modified tax expenditure to include a statement of the objectives and intent of the tax expenditure.
- Generally subjects to Controlling Board approval purchases made by competitive sealed proposal by the Department of Administrative Services purchases and state agencies.

CONTENT AND OPERATION

Tax Expenditure Review Committee

The bill creates a permanent committee – composed of six legislators and the Tax Commissioner or the Commissioner's designee – to review all existing "tax

* This analysis was prepared before the report of the Senate Ways and Means Committee appeared in the Senate Journal. Note that the list of co-sponsors and the legislative history may be incomplete.

expenditures." The review of existing tax expenditures would have to be scheduled so that each existing tax expenditure would be reviewed at least once every eight years. The committee is named the Tax Expenditure Review Committee.

"Tax expenditure"

The bill limits existing law's definition of "tax expenditure," which currently is used to define the content of the Department of Taxation's Tax Expenditure Report that accompanies the Governor's proposed biennial operating budget.

As currently defined, a tax expenditure is "any tax provision in the Revised Code that exempts, either in whole or in part, certain persons, income, goods, services, or property from the effect of taxes established in the Revised Code, including, but not limited to, tax deductions, exemptions, deferrals, exclusions, allowances, credits, reimbursements, and preferential tax rates."

Under the bill, such a provision qualifies as a tax expenditure only if all of the following apply: (1) it could reduce revenue to the state's General Revenue Fund, (2) it may be legislatively changed or repealed, (3) the attribute exempted from tax would otherwise be included as part of that tax's defined base, and (4) it is not subject to an alternate tax.[1] These new limitations are already employed by the Tax Commissioner in deciding which tax expenditures to include in the Tax Expenditure Report.

According to the most recently issued Tax Expenditure Report, there are currently 128 tax expenditures satisfying the current law definition.

Duty of committee

The Tax Expenditure Review Committee is required to establish a schedule for reviewing each existing tax expenditure at least once every eight years. The Committee may order tax expenditures for review according to the order of their enactment or modification or according to the beneficiaries, the objectives, or the policy rationale. The Committee must recommend whether each tax expenditure under review should be continued, modified, repealed, or scheduled for further review later. The Committee may recommend "accountability standards" for future reviews of a tax expenditure.[2]

Review criteria

The bill sets forth the following factors the Committee may consider in reviewing existing tax expenditures:

---

[1] R.C. 5703.48.

[2] R.C. 5703.95(D).

--The number and classes of persons that benefit from the tax expenditure;

--State and local fiscal effects;

--Public policy objectives, for which the Committee may consider legislative history, the sponsor's intent, and the tax expenditure's effects on economic development, "high-wage jobs," and "community stabilization";

--The success of the tax expenditure in meeting its objectives;

--Whether the objectives could be served by other means or with less fiscal cost;

--Whether the objectives could have been accomplished by appropriations instead of tax expenditures;

--Whether the tax expenditure is more expansive than intended or has any other unintended effects, including giving an unfair competitive advantage to recipients at the expense of other businesses;

--The extent of any negative effects on recipients from ending a tax expenditure;

--The feasibility of modifying a tax expenditure to include adjustments or recapture in case recipients do not comply with its terms.[3]

Proposed tax expenditures

The Committee is not charged with reviewing tax expenditures proposed in pending legislation. However, the bill requires any bill introduced in the General Assembly that proposes to enact or modify a tax expenditure to include a statement explaining its objectives and the sponsor's intent.[4]

Report

The Committee is required to issue a report by July 1 of every even-numbered year of its determinations, deliver a copy of the report to the Governor, the Speaker of the House, the Senate President, and the minority leaders of each chamber, and arrange

---

[3] R.C. 5703.95(E).

[4] R.C. 5703.95(G).

for the report to be made available online.[5] The bill requires the report to be included as an appendix to the Governor's proposed biennial operating budget.[6]

Committee composition

The Committee is composed of six voting members: three Representatives and three Senators appointed by the Speaker and Senate President, respectively, in consultation with their minority leader counterparts. No more than two Representatives or Senators may be members of the same political party. Initial appointments must be made within 30 days after the bill's effective date. Terms on the Committee coincide with the term of each General Assembly.

Additionally, the bill requires the Tax Commissioner or the Commissioner's designee to serve as an *ex officio*, nonvoting member of the Committee.[7]

The Committee's chairperson, elected from among the legislative members, serves a two-year term, but two consecutive chairpersons may not be members of the same chamber.

Meetings

The Committee must meet at least once during the first year of each fiscal biennium. Its meetings are open to the public to the extent required under the existing Open Meetings Law (R.C. 121.22), and the Committee must allow any person to present testimony or evidence related to a tax expenditure. It must hold its first meeting within 90 days after the bill's effective date. For each tax expenditure currently under review, the Committee must hold at least one meeting during which members of the public may present evidence or testimony related to that expenditure. The chairperson may call a special meeting to accept evidence or testimony on a particular tax expenditure at the request of a member of the public.

Staff assistance

The bill requires staff of the Legislative Service Commission to assist the Committee as requested. Additionally, state agencies are required to provide the Committee with any information it requires to perform its duties.[8]

---

[5] R.C. 5703.95(F).

[6] R.C. 107.03.

[7] R.C. 5703.95(B).

[8] R.C. 5703.95(C).

Purchases by competitive sealed proposals

The bill prohibits the Director of Administrative Services from making purchases of supplies and services by competitive sealed proposals without the prior approval of the Controlling Board.[9] Consistent with this new requirement, and because purchases by competitive sealed proposals are done by the Department, the bill also amends the definition of "competitive selection" for purposes of office services provided by the Department in order to remove competitive sealed proposal from the list of procedures for making purchases.[10]

Under current law, the Director may make purchases by competitive sealed proposals whenever the Director determines that the use of competitive sealed bidding is not possible or not advantageous to the state.[11] In addition, state agencies are generally prohibited from making purchases from a particular supplier that would amount to $50,000 or more, or leasing real estate from a particular supplier that would amount to $75,000 or more, when combined with all disbursements to that supplier during the fiscal year, unless the purchase or lease is made by competitive selection *or* with the approval of the Controlling Board.[12]

HISTORY

ACTION	DATE
Introduced	01-28-15
Reported, H. Ways & Means	05-27-15
Passed House (98-0)	06-24-15
Reported, S. Ways & Means	---

H0009-RS-131.docx/emr

[9] R.C. 125.071(F).

[10] R.C. 125.01(I).

[11] R.C. 125.071.

[12] R.C. 127.16, not in the bill.