



# OHIO LEGISLATIVE SERVICE COMMISSION

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## Bill Analysis

Joe McDaniels

### **Sub. S.B. 51\***

132nd General Assembly  
(As Reported by H. Finance)

**Sens.** Skindell and Eklund, Thomas, Schiavoni, Williams, Hite, O'Brien, LaRose, Burke, Coley, Dolan, Gardner, Hackett, Lehner, Manning, Oelslager, Peterson, Tavares, Terhar, Yuko

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## **BILL SUMMARY**

### **Special improvement districts**

- Adds Lake Erie shoreline improvement projects to the list of public improvements that may be financed by a special improvement district (SID).
- Allows a SID created for shoreline improvement purposes to extend into the territory of Lake Erie, but exempts the state from any special assessment levied against the territory.
- Allows a SID created for shoreline improvement to include noncontiguous parcels.
- Authorizes the levy of a special assessment within a SID created for shoreline improvement for up to 30 years.
- Explicitly requires SIDs created for shoreline improvement to comply with all applicable zoning, environmental, and coastal management laws and rules.

### **Sales and use tax**

- Exempts from sales and use tax exports that are in Ohio only temporarily for storage and package consolidation before being delivered to a foreign citizen and declares an emergency.

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

## **Background checks**

- Establishes a criminal background check procedure for public employees and contractors with access to federal tax information.

## **Municipal net profits tax**

- Changes the definition of "taxable year" for a business that elects to have the Department of Taxation administer its municipal income tax and declares an emergency.

## **Property tax**

- Provides for one-time payments to certain taxing districts to partially compensate those districts for property tax revenue losses due to a decline in the value of nuclear power plants.
- Establishes a temporary procedure by which a village may apply for a property tax exemption and the abatement of unpaid property taxes, penalties, and interest charged and payable in 2009 and thereafter for a former school building.
- Authorizes a retrospective tax exemption for improvements subject to a municipal tax increment financing arrangement that were not exempt for prior tax years due to a failure to comply with exemption procedures.
- Requires a recomputation of foundation funding for a school district if a nonprofit hospital in the district was mistakenly subject to property tax for 2016.

## **Lodging tax**

- Extends the deadline for Clermont County to levy an additional 1% lodging tax by extending the date by which the county's convention and visitors' bureau must first enter into a contract to construct a sports facility.

## **Conveyance of state owned property**

- Authorizes the conveyance of state-owned real estate to the City of Akron.

## **Severability**

- Specifies that if any provision in the bill is invalidated by a court, the invalidity will not affect the bill's other provisions.



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## CONTENT AND OPERATION

### Special improvement districts

The bill expands the scope of public improvements that may be funded and completed by a special improvement district (SID) to include shoreline improvement projects along Lake Erie. The bill also includes several special provisions pertaining to SIDs that perform shoreline improvements: allowing inclusion of state-owned land held in the public trust and noncontiguous parcels, allowing the addition of new territory if at least one shoreline improvement will be completed on each added parcel, allowing the levy of a special assessment for up to 30 years, and explicitly requiring compliance with zoning, environmental, and coastal management laws and rules.

#### Background

A SID is an economic development tool that may be used to facilitate the development and implementation of public services within a defined district located within one or more municipal corporations or townships. The improvements and services are funded through a special assessment levied against property in the district. The SID is administered by the board of directors of a nonprofit corporation that is either created for the purpose of governing the district or meets other criteria prescribed by state law.



SIDs are generally created on the initiative of property owners through a petition process. If the petition creating the SID includes plans for one or more special energy improvement projects, it must be signed by 100% of the property owners within the proposed district. Otherwise, the petition need only be signed by the owners of 75% of the property located within the district or 60% of the front footage of such property. In either case, the petition is not effective until it is approved by each township or municipal corporation in which the district is to be located.

### **Purposes**

The bill adds Lake Erie shoreline improvement projects to the list of public improvements that may be funded and completed by a SID. Specifically the bill allows for the acquisition, construction, installation, equipment, improvement, maintenance, or repair of property that abates erosion along the Lake Erie shoreline.<sup>1</sup> Under continuing law, the board of directors of a SID may acquire land, or may plan, design, construct, reconstruct, enlarge, or alter any facility or improvement, as long as the activity is one for which municipal corporations may levy special assessments. A board may also undertake special energy improvement projects such as installing solar, geothermal, or energy efficiency improvements.<sup>2</sup>

### **Petition**

As with SIDs that include plans for special energy improvement projects, the petition creating a shoreline improvement SID must be signed by 100% of the property owners within the district. However, the bill creates a special exception if the owner's property is part of a planned community or a condominium development. In that case, the owner is deemed to have signed the petition if the petition is approved through an alternative process – such as a vote of the owners association – described in the bylaws, declarations, covenants, and restrictions governing the planned community or condominium development. This exception applies only to shoreline improvement SIDs.<sup>3</sup>

### **Territory**

Under current law, a SID may not include publicly owned property unless the state or subdivision that owns the property consents in writing to its inclusion in the district. The bill explicitly allows shoreline improvement projects funded by a SID to extend into the territory of Lake Erie – the waters of which, extending to its natural

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<sup>1</sup> R.C. 1710.01(O).

<sup>2</sup> R.C. 1710.01(G) and (I).

<sup>3</sup> R.C. 1710.02(E) and (H) and 1710.06(B).

shoreline, are held by the state in trust for the people. The bill specifies that, even if portions of Lake Erie are included in a SID, the state remains exempt from any special assessment levied therein.<sup>4</sup>

The bill also permits the shoreline SIDs to include noncontiguous parcels so long as a SID-funded project is designated for each noncontiguous parcel. Also, territory may be added if a SID-funded project is designated for each added parcel and if the addition of territory is authorized by the initial SID plan that was adopted by the petitioning land owners and approved by the participating municipal corporations and townships. This contrasts with continuing law governing most other SIDs (except for energy improvement SIDs), which generally requires that all parcels in a SID be contiguous and does not permit the initial plan to provide for territory to be added.<sup>5</sup>

### **Special assessment period**

Public improvements undertaken by a SID are funded through a special assessment charged against property in the district by each participating municipal corporation and township. Generally, the duration of SID special assessments is limited to ten years (although, subsequent plans for services and improvements may be adopted – and assessments levied – if they are approved by the participating political subdivisions and by the same proportion of property owners required to adopt the initial SID development plan).

Under the bill, if the proceeds of the special assessment are to be used for shoreline improvement projects, the duration of the levy may be for up to 30 years. Continuing law authorizes the same extended assessment period if the proceeds are to be used for special energy improvement projects.<sup>6</sup>

### **Compliance with other laws and rules**

The bill explicitly requires that all activities associated with a shoreline improvement project comply with zoning, environmental, and coastal management laws and rules. The requirement references laws and rules created at the federal, state, and local level.<sup>7</sup>

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<sup>4</sup> R.C. 1710.02(A). See also, R.C. 1506.10, not in the bill, and *State ex rel. Merrill v. Ohio Dep't of Natural Res.*, 130 Ohio St.3d 30 (2011).

<sup>5</sup> R.C. 1710.02(A).

<sup>6</sup> R.C. 1710.02(F).

<sup>7</sup> R.C. 1710.02(E).



## Sales and use tax exemption for exports temporarily stored in Ohio

The bill authorizes a sales and use tax exemption for exports that are delivered into Ohio only for temporary storage and package consolidation before being shipped to a foreign citizen.

Under continuing law, state and local sales taxes apply to the sale of goods and certain taxable services within the state. The use tax complements the sales tax, and applies when goods or services are purchased outside of, but used, consumed, or stored in Ohio. The use tax is levied at the same rate as state and local sales taxes.

Several courts have considered when the use tax applies to goods that are shipped through or exported from Ohio, and not used here permanently. Under the U.S. Constitution, a state may not levy a tax on exports<sup>8</sup> or impose a "direct burden on foreign or interstate commerce."<sup>9</sup> Consequently, a use tax cannot apply to goods that solely travel through a state in the stream of commerce, or in the "export stream."<sup>10</sup> However, if goods in interstate commerce are "halted temporarily" in Ohio, or if the process of exporting a good is not "continuous," the use tax applies unless the use is specifically exempted by law.<sup>11</sup>

The bill provides an exception to this general rule for exports that pause in Ohio for the sole purpose of temporary storage and package consolidation. To qualify, the goods must be delivered into this state only for that purpose, and must be shipped to the foreign address of a person that is not a U.S. citizen. While in Ohio, the goods may be held in storage for up to 60 days, and must be held by an individual or business that is not related to the purchaser.<sup>12</sup> Goods that are required to be registered or licensed under Ohio law do not qualify for the exception.<sup>13</sup>

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<sup>8</sup> Article I, Section 10 of the U.S. Constitution (the "Import-Export Clause") prohibits states from "lay[ing] any imposts or duties on imports or exports . . . ."

<sup>9</sup> Article I, Section 8 of the U.S. Constitution (the "Commerce Clause") grants Congress the exclusive power to "regulate commerce with foreign nations and among the several states," and thereby prohibits a state from imposing "direct burdens on interstate commerce." *Quill Corp. v. N.D.*, 504 U.S. 298 (1992).

<sup>10</sup> *Kosydar v. National Cash Register Co.*, 417 U.S. 62, 65 (1974) (finding that computers manufactured for export, and stored in an Ohio warehouse awaiting international shipment, were subject to Ohio's use tax).

<sup>11</sup> *Beatrice Foods Co. v. Lindley*, 70 Ohio St.2d 29, 33 (1982) and *Kosydar*, quoting *Coe v. Errol*, 116 U.S. 517, 527 (1886).

<sup>12</sup> Generally, a person is regarded as "related" to a business if one holds a certain substantial level of ownership stake in the other.

<sup>13</sup> R.C. 5739.02(B)(56).



## **Effective date**

The new sales and use tax exemption applies on and after October 1, 2017. The bill declares the exemption an emergency measure as it is necessary to prevent imminent business closures.<sup>14</sup>

## **Background checks for public employees who use federal tax data**

The bill requires public employees and contractors with access to federal tax information to undergo a criminal background check. The requirement applies to the following individuals, if they will have access to or the use of such information:

(1) State employees or prospective state employees;

(2) Contractors with the state;

(3) Employees, prospective employees, or contractors of a board of county commissioners or county department of jobs and family services, child support enforcement agency, or children services agency.

Ohio's Bureau of Criminal Identification and Investigation (BCII) must perform the criminal records checks based on a fingerprint submission. As part of its check, the BCII must request criminal record information from the Federal Bureau of Investigation (FBI). In addition, the individual's employer or potential employer is required to comply with any separate request by the FBI to conduct a national background check on the individual.

The bill's requirements are designed to bring Ohio into compliance with Internal Revenue Service Publication 1075, which was revised in September 2016 to require background checks for state and local employees with access to federal tax information pursuant to federal law requiring states and local governments to preserve the confidentiality of such information as a condition for having access to it.<sup>15</sup>

## **Municipal net profits tax**

The bill changes the definition of "taxable year" for a business that elects to have the Department of Taxation administer its municipal income tax. Businesses that utilize an accounting period that aligns with the calendar year would not be affected. A business that uses an accounting period other than the calendar year (i.e., a fiscal year taxpayer) would be required to report and pay taxes on net profits earned in the fiscal

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<sup>14</sup> Sections 19 and 27.

<sup>15</sup> R.C. 109.572 and 124.74; 26 U.S.C. 6103.



year that begins in the calendar year upon which the calculation of the business's adjusted federal taxable income is based, rather than the fiscal year that ends during that calendar year.<sup>16</sup>

Beginning in 2018, businesses other than sole proprietors are permitted to file one municipal income tax return with the Department of Taxation that covers the business's total tax liability to all municipalities. Alternatively, a business may choose to continue filing separate tax returns with each municipality in which the business operates. The Department assumes all aspects of administering the taxes of those businesses that elect to file a single return. Almost all of the revenue is distributed to the appropriate municipalities; one-half per cent is kept by the state as an administrative fee. A municipality continues to administer its tax on the income of individuals, as well as businesses that do not elect to file a single return. Each municipality also retains control of the rate of its tax on business income, and whether any business credits are allowed.<sup>17</sup>

### **Effective date**

The bill's changes to the definition of "taxable year" apply to taxable years (as defined under the bill) beginning on or after January 1, 2018. To effectuate the change before 2019 begins, the bill declares an emergency with respect to that provision.<sup>18</sup>

## **Property tax**

### **Payments to certain taxing districts with a nuclear power plant**

The bill provides for one-time payments, to Carroll Township in Ottawa County and Perry Township and Perry Joint Fire District in Lake County, to partially compensate those taxing districts for losses in property tax revenue due to the declining value of nuclear power plants located in the districts.

Under the bill, \$160,650 would be paid to Perry Township, \$249,285 to Perry Joint Fire District, and \$125,097 to Carroll Township.<sup>19</sup>

The one-time payments are in addition to monthly payments that Perry Township and Perry Joint Fire District already receive under continuing law. Those monthly payments were authorized in June of 2018, with the first payments made to the

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<sup>16</sup> R.C. 718.81 and 718.85.

<sup>17</sup> R.C. 718.80 to 718.95, not in the bill.

<sup>18</sup> Sections 15 and 26.

<sup>19</sup> Section 21 of the bill.



taxing districts in November of 2018.<sup>20</sup> Those payments are to be made over ten years, with each succeeding year's payments equaling 90% of the preceding year's payment. Between November 2018 and June 2019, the monthly payments to both taxing districts will equal approximately \$204,968.

In order for a taxing district to qualify for continuing law's monthly payments, (a) the nuclear power plant located in the district must have declined in value by 30% or more between 2016 and 2017 and (b) the township or fire district must levy a tax specifically for police or fire protection, emergency medical service, ambulance service, or a combination of those purposes. Currently, Carroll Township does not qualify for the monthly payments because it does not levy a tax specifically for those purposes, instead funding those services from its general fund, according to the county auditor's office.<sup>21</sup>

Continuing law's monthly payments to Perry Township and Perry Joint Fire District are made through the existing mechanism of the Local Government Fund. Correspondingly, to make the bill's additional one-time payments, the bill requires the Director of Budget and Management to transfer money from the GRF to the LGF as soon as possible, and the Tax Commissioner to pay the money to the treasuries of Lake and Ottawa Counties, to be distributed to the three taxing districts.

### **Property tax abatement for former school buildings**

The bill establishes a temporary procedure by which a village may apply for a retrospective tax exemption and the abatement of unpaid property taxes, penalties, and interest charged and payable in 2009 and thereafter for a former school building owned by the village. To qualify for the exemption and abatement, the unpaid charges must exceed the price paid by the village in 2009 for the property, and the property must currently be used for a tax-exempt purpose. The application for exemption and abatement must be filed with the Tax Commissioner before July 1, 2019.

No taxes, penalties, or interest may be abated for any tax year in which the property was used in the operation of a business. However, the bill specifies that renting the property to members of the public for use in athletics does not constitute "use in the operation of a business" for the purposes of the exemption and abatement.

Under continuing law, property owned by a municipal corporation is tax exempt if it is used "exclusively for a public purpose" or as a "public recreational facility for

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<sup>20</sup> Am. Sub. S.B. 299 of the 132nd General Assembly.

<sup>21</sup> R.C. 5747.50(E).



athletic events," but such property may not be exempted if more than three years' worth of taxes remain unpaid.<sup>22</sup>

### **Retrospective tax exemption for TIF property**

The bill authorizes a retrospective property tax exemption for improvements subject to a municipal tax increment financing (TIF) arrangement for tax year 2005 or 2006, but that did not receive exemption for those years due to the failure to comply with continuing law's property tax exemption procedures. A municipality may declare a parcel or incentive district to be a TIF, which exempts the increased value in improvements to real property on that parcel or in that district from property tax. In turn, the property owner is generally required to make annual service payments to the municipal corporation equal to the tax the owner would have paid on those improvements had they not been exempt. Service payments typically are used to pay for public infrastructure related to the development of the parcel or incentive district and to compensate school districts and some other taxing units for the forgone tax revenue.<sup>23</sup>

To obtain a TIF exemption, continuing law requires either the property owner or the municipality granting the TIF to annually file an exemption application with the Tax Commissioner by December 31. A property owner or municipality may also file an application for remission of property taxes paid for prior tax years, but the Commissioner may not remit more than three years of payments.<sup>24</sup>

The bill allows a property owner whose improvements are subject to the TIF or the municipal corporation that granted the TIF to apply to the Commissioner to retrospectively exempt the improvements for tax year 2005 or 2006, provided that the owner or municipality had originally filed an exemption application for that year that was dismissed by the Commissioner for failure to comply with the exemption procedures summarized above. The application must be filed within 90 days after the bill's effective date and must state the amount of any unpaid taxes, penalties, and interest that has accrued against the improvements. If the Commissioner approves the application, the TIF improvements become retrospectively exempted for the 2005 or 2006 tax year in question. In the event of a denial, the Commissioner must direct the

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<sup>22</sup> Section 17 and R.C. 5709.08 and 5709.081, not in the bill.

<sup>23</sup> R.C. 5709.40, 5709.42, and 5709.43, not in the bill.

<sup>24</sup> R.C. 5713.08, 5713.081, and 5715.27, not in the bill.



county treasurer of the county in which the improvements are located to collect any unpaid taxes, interest, and penalties.<sup>25</sup>

The bill's retrospective exemption mechanism applies to any improvements for which an exemption application is pending with the Commissioner on the bill's effective date without the owner or municipality having to file another exemption application.<sup>26</sup>

### **Correction of tax certifications for foundation funding**

The bill requires certain readjustments to tax valuations used for computing state foundation funding for school districts. Under continuing law, the state's school foundation funding formula is based partially on the aggregate property wealth of the school district, i.e., the total value of taxable property in the district. A district with low property wealth generally will receive more state aid than an equivalent district with higher property wealth. Tax-exempt property is generally excluded for the purpose of calculating the district's property wealth. The Tax Commissioner annually certifies certain property tax data, including the total aggregate taxable value of property in the district, to the Department of Education for the purpose of determining each district's property wealth.<sup>27</sup>

The bill's tax valuation readjustment applies only to a city or joint vocational school district whose territory includes a nonprofit hospital, any portion of which was taxed in 2016 despite being eligible for a property tax exemption for that year. Under the bill, the appropriate county auditor must certify readjusted tax year 2016 valuations, as though the hospital had been tax-exempt for tax year 2016, to the Tax Commissioner within 30 days after the bill's 90-day effective date.<sup>28</sup> The corrected certification will presumably indicate a lower aggregate valuation of taxable property within the school district.

The Tax Commissioner must certify the new 2016 taxable valuation of each school district in the county to the Department of Education. For each district whose aggregate values were changed, i.e., lowered, by the correction (likely only the city school district and joint vocational school district whose territory overlaps with the hospital), the Department must apply those corrected valuations to calculate foundation funding for the affected districts and make any adjustments to each affected district's FY

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<sup>25</sup> Section 16(A) and (B) of the bill.

<sup>26</sup> Section 16(C) of the bill.

<sup>27</sup> R.C. 3317.015 and 3317.021, not in the bill.

<sup>28</sup> Section 18 of the bill.



2018 and 2019 foundation funding payments necessary to reflect the corrected valuations and make a single "adjustment payment" to those districts by August 31, 2019. For subsequent fiscal years, the Department incorporates the corrected values into foundation funding payments for those districts.

Though the corrected valuations will likely result in higher foundation payments to affected school districts, the bill specifies that the correction will not lower or increase foundation funding calculated for unaffected districts. (Generally, recalculating a school district's valuation-based funding affects the statewide average valuation, which potentially affects the funding of all other districts.)

## **Lodging tax**

### **Clermont County lodging tax**

Continuing law authorizes a county with a 2010 population of between 190,000 and 200,000 and with an existing 3% lodging tax (i.e., Clermont County) to increase the rate of its tax up to an additional 1%. The revenue derived from the increase in rate must be used to fund the construction and maintenance of a professional sports facility and to promote tourism with respect to that facility through the county's convention and visitors' bureau.

The additional tax may only take effect if the convention and visitors' bureau has entered into a contract for the construction or maintenance of the facility by January 1, 2019. The bill extends this deadline to December 31, 2019. If the bureau has not entered into such a contract by that date, the authority to levy the tax expires.<sup>29</sup>

## **Conveyance of state owned property to the City of Akron**

The bill authorizes the Governor to execute a deed in the name of the state conveying real estate in Summit County to the City of Akron. The bill contains a complete legal description of the real estate, and includes authorization for the Department of Administrative Services (DAS) to correct or modify the description to a final form if necessary to facilitate recording the deed.

The real estate must be sold as an entire tract and not in parcels. The conveyance must include improvements and chattels situated on the real estate, and is subject to all easements, covenants, conditions, and restrictions of record; all legal highways and public rights-of-way; zoning, building, and other laws, ordinances, restrictions, and regulations; and real estate taxes and assessments not yet due and payable. The real estate must be conveyed in an "as-is, where-is, with all faults" condition.

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<sup>29</sup> R.C. 5739.09(A)(12)(c).



The bill specifies that the deed may contain restrictions, exceptions, reservations, reversionary interests, and other terms and conditions the DAS Director determines to be in the state's best interest. And, after the conveyance, any restrictions, exceptions, reservations, reversionary interests, or other terms and conditions the deed contains may be released by the state or DAS without the necessity of further legislation.

The bill requires the DAS Director to offer the real estate to the City of Akron through a real estate purchase agreement at terms and conditions acceptable to the Director. Consideration for the conveyance must be at a price acceptable to the Director. The net proceeds of the sale must be deposited into the state treasury to the credit of the General Revenue Fund.

The City of Akron must pay the costs associated with the purchase, the closing, and the conveyance including surveys, title evidence, title insurance, transfer cost and fees, recording costs and fees, taxes, and any other fees assessments, and cost that may be imposed.

Upon payment of the purchase price, DAS must request the Auditor of State, with the assistance of the Attorney General, to prepare a Governor's Deed for the conveyance of the real estate. The Deed must state the consideration and must be executed by the Governor in the name of the state, countersigned by the Secretary of State, sealed with the Great Seal of the State, presented in the Office of the Auditor of State for recording, and delivered to the City of Akron. The City must present the deed for recording in the Office of the Summit County Recorder.

The authorization in the bill for the land conveyance expires three years after the bill's effective date.<sup>30</sup>

## **Severability**

The bill includes a "severability clause," specifying that, in the event a court invalidates any of the bill's provisions, other provisions of the bill capable of operating without the invalidated provision may continue to do so.<sup>31</sup> Essentially, the clause is designed to encourage courts to "sever" the invalid provision from the remainder of the

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<sup>30</sup> Section 22.

<sup>31</sup> Section 23.



bill.<sup>32</sup> Continuing law furnishes a general severability clause that applies only to sections of the Revised Code.<sup>33</sup>

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## HISTORY

ACTION	DATE
Introduced	02-14-17
Reported, S. Energy and Natural Resources	06-27-18
Passed Senate (30-0)	07-10-18
Reported, H. Finance	---

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<sup>32</sup> See *State v. Foster*, 109 Ohio St.3d 1, 28 (2006).

<sup>33</sup> R.C. 1.50, not in the bill.

