



OHIO LEGISLATIVE SERVICE COMMISSION

Final Analysis

Joe McDaniels

Am. Sub. S.B. 51

132nd General Assembly

(As Passed by the General Assembly)

(For details of the act's fiscal provisions, see the LSC Fiscal Note & Local Impact Statement, As Enacted, available at <https://www.legislature.ohio.gov/download?key=11013&format=pdf>)

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

Reps. Antonio, Barnes, Craig, Duffey, Holmes, Lanese, Lepore-Hagan, Miller, Pelanda, Reineke, Riedel, Rogers, Scherer, K. Smith, Strahorn, Young

Effective date: March 20, 2019; operating appropriations effective December 19, 2018

ACT 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.
- 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.

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.

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 for a former school building.
- Authorizes a retrospective tax exemption for improvements subject to a municipal tax increment financing (TIF) arrangement that were not exempt for prior 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 property

- Authorizes the conveyance of the Oliver Ocasek Government Office Building in Akron to the City of Akron.

Appropriations

- Makes capital and operating appropriations.

Severability

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



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CONTENT AND OPERATION

Special improvement districts

The act 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 act 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 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 act adds Lake Erie shoreline improvement projects to the kinds of public improvements that may be funded and completed by a SID. Specifically it allows for the acquisition, construction, installation, equipment, improvement, maintenance, or repair of property that abates erosion along the Lake Erie shoreline.¹ 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.²

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 act 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.³

Territory

Under prior law changed in part by the act, 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 act allows shoreline improvement projects funded by a SID to extend into the territory of Lake Erie – the waters of which,

¹ R.C. 1710.01(O).

² R.C. 1710.01(G) and (I).

³ R.C. 1710.02(E) and (H) and 1710.06(B).



extending to its natural shoreline, are held by the state in trust for the people. The act specifies that, even if portions of Lake Erie are included in a SID, the state remains exempt from any special assessment levied therein.⁴

The act 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.⁵

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 act, 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.⁶

Compliance with other laws and rules

The act 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.⁷

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

⁵ R.C. 1710.02(A).

⁶ R.C. 1710.02(F).

⁷ R.C. 1710.02(E).



Sales and use tax exemption for exports temporarily stored in Ohio

The act 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 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 exports⁸ or impose a "direct burden on foreign or interstate commerce."⁹ Consequently, a use tax cannot apply to goods that solely travel through a state in the stream of commerce, or in the "export stream."¹⁰ 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 otherwise specifically exempted by law.¹¹

The act 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.¹² Goods that are required to be registered or licensed under Ohio law do not qualify for the exception.¹³

⁸ 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"

⁹ 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).

¹⁰ *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).

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

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

¹³ R.C. 5739.02(B)(56).



Effective date

The new sales and use tax exemption applies on and after October 1, 2017.¹⁴

Background checks for public employees who use federal tax data

The act 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, BCII must request criminal record information from the Federal Bureau of Investigation (FBI). In addition, the individual's employer or potential employer must comply with any separate request by the FBI to conduct a national background check on the individual.

The act'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.¹⁵

Municipal net profits tax

The act changes the definition of "taxable year" for a business that elects to have the Department of Taxation administer its municipal income tax and that uses an accounting period other than the calendar year (i.e., a fiscal year taxpayer). Under the act, such a business must report and pay taxes on net profits earned in the fiscal 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

¹⁴ Section 19.

¹⁵ R.C. 109.572 and 124.74; 26 U.S.C. 6103.



calendar year.¹⁶ The change applies to taxable years (as defined under the act) beginning on or after January 1, 2018.¹⁷

Beginning in 2018, businesses other than sole proprietors were 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.¹⁸

Property tax

Payments to certain taxing districts with a nuclear power plant

The act 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 act, \$160,650 is to be paid to Perry Township, \$249,285 to Perry Joint Fire District, and \$125,097 to Carroll Township.¹⁹

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 taxing districts in November 2018.²⁰ Those payments are to be made over ten years, with each succeeding year's payment 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

¹⁶ R.C. 718.81 and 718.85.

¹⁷ Section 15.

¹⁸ R.C. 718.80 to 718.95, not in the act.

¹⁹ Section 21 of the act.

²⁰ Am. Sub. S.B. 299 of the 132nd General Assembly.



specifically for police or fire protection, emergency medical service, ambulance service, or a combination of those purposes.²¹ 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.

Continuing law's monthly payments to Perry Township and Perry Joint Fire District are made through the Local Government Fund. Correspondingly, to make the act's additional one-time payments, the act 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 for disbursement to the three taxing districts.

Property tax abatement for former school buildings

The act 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 act 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 athletic events," but such property may not be exempted if more than three years' worth of already-accrued taxes remain unpaid.²²

Retrospective tax exemption for TIF property

The act 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 property tax exemption procedures. A municipality may declare a parcel or

²¹ R.C. 5747.50(E).

²² Section 17 and R.C. 5709.08 and 5709.081, not in the act.



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.²³

To obtain a TIF exemption, continuing law requires either the property owner or the municipality granting the TIF to 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.²⁴

The act allows a property owner whose improvements are subject to the TIF, or the municipal corporation that granted the TIF, to apply for a retrospective exemption 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 application procedures originally. The application must be filed June 18, 2019 (90 days after the act's effective date). If the Commissioner approves the application, the TIF improvements become exempted for the 2005 or 2006 tax year in question. In the event of a denial, the Commissioner must direct the county treasurer of the county in which the improvements are located to collect any unpaid taxes, interest, and penalties.²⁵

The act's retrospective exemption mechanism applies to any improvements for which an exemption application is pending with the Commissioner on March 20, 2019 (the act's effective date) without the owner or municipality having to file another exemption application.²⁶

Correction of tax certifications for foundation funding

The act 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

²³ R.C. 5709.40, 5709.42, and 5709.43, not in the act.

²⁴ R.C. 5713.08, 5713.081, and 5715.27, not in the act.

²⁵ Section 16(A) and (B) of the act.

²⁶ Section 16(C) of the act.



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.²⁷

The act'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 act, 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 by April 19, 2019 (30 days after the act's effective date).²⁸ 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 the district's FY 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 act 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

²⁷ R.C. 3317.015 and 3317.021, not in the act.

²⁸ Section 18 of the act.



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.

Under prior law, the additional tax could only take effect if the convention and visitors' bureau entered into a contract for the construction or maintenance of the facility by January 1, 2019. The act 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.²⁹

Conveyance of state property to Akron

The act authorizes the Governor to execute a deed in the name of the state conveying the Oliver Ocasek Government Office Building in Akron to the City of Akron. The act 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. This conveyance authorization expires March 20, 2022.

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

The real estate must be sold as an entire tract and not in parcels. The deed may contain restrictions, exceptions, reservations, reversionary interests, and other terms and conditions the Director determines to be in the state's best interest. 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 further legislation.

The city 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.³⁰

²⁹ R.C. 5739.09(A)(12)(c).

³⁰ Section 22 of the act.



Severability

The act includes a "severability clause," specifying that, in the event a court invalidates any of the act's provisions, other provisions of the act capable of operating without the invalidated provision may continue to do so.³¹ Essentially, the clause is designed to encourage courts to "sever" the invalid provision from the remainder of the act.³² Continuing law furnishes a general severability clause that applies only to sections of the Revised Code.³³

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	12-12-18
Passed House (68-26)	12-12-18
House motion to reconsider (77-4)	12-12-18
Passed House (66-21)	12-12-18
Senate concurred in House amendments (29-2)	12-13-18

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³¹ Section 23 of the act.

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

³³ R.C. 1.50, not in the act.

