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OHIO LEGISLATIVE SERVICE COMMISSION

Office of Research
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Office

S.B. 225
134th General Assembly

Fiscal Note & Local Impact Statement

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Version: As Reported by House Ways and Means

Primary Sponsor: Sen. Schuring

Local Impact Statement Procedure Required: Yes

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Highlights

Fund	FY 2022-FY 2023 Biennium	Future Years
State General Revenue Fund		
Revenues	Loss of up to \$82.1 million	Loss of up to \$82.2 million during the FY 2024-FY 2025 biennium
Local Government and Public Library funds (counties, municipalities, townships, and public libraries)		
Revenues	Loss of up to \$2.9 million	Loss of up to \$2.8 million during the FY 2024-FY 2025 biennium

Note: The state or school district fiscal year runs from July 1 through June 30 and is designated by the calendar year in which it ends. For other local governments, the fiscal year is identical to the calendar year.

- The bill increases the amount of historic building rehabilitation tax credits that may be issued in each of FY 2023 and FY 2024 from \$60 million to \$120 million. Some of the credits issued in those years may be claimed in subsequent fiscal years.
- For such tax credits approved after the bill's effective date and before the end of FY 2023, the allowable credit is increased to 35% of the dollar amount of qualified rehabilitation expenditures from 25%, in a county, a township, or a municipal corporation that has a population of less than 300,000. Reapplication for the larger credit is permitted, for credits approved between the start of FY 2021 and the bill's effective date if construction has not started. The enhanced rehabilitation tax credit claimed for any one project may not exceed \$10 million for these credits, up from \$5 million for credits approved in other years.

- A limit is increased on the amount of nonrefundable Opportunity Zone credits that may be issued, to \$75 million in the July 2021-June 2023 biennium, up from \$50 million that may be claimed in earlier biennia. The limit is changed to a fiscal-year basis in FY 2024 when \$50 million in credits may be issued. Thereafter the limit is \$25 million.
- Persons other than state income taxpayers would be allowed to invest in Ohio Opportunity Zones and could transfer acquired credits to taxpayers.
- Revenue sharing with local governments and public libraries via the Local Government Fund and Public Library Fund would be reduced.
- The bill relieves Canton of responsibility for administering a 19th century charitable fund.

Detailed Analysis

The bill makes temporary changes to the historic building rehabilitation tax credit program and to the Ohio Opportunity Zone investment tax credit program. In addition, the bill permanently shifts the limit on Opportunity Zone credits to an annual basis, and opens investment in Ohio qualified opportunity funds to persons other than taxpayers subject to the state income tax. It also relieves the city of Canton of responsibility for administration of a small charitable fund with which it has been tasked since 1879.

Revenue losses in the “**Highlights**” table above are shown in the years when the additional tax credits could be issued. Some portion of the revenue losses resulting from use of the credits might instead occur in subsequent years.

Historic building rehabilitation tax credits

The bill increases the total amount of rehabilitation tax credits that may be approved to \$120 million for each of FY 2023 and FY 2024 from \$60 million in prior law and for subsequent years. In addition, for a tax credit approved after the bill’s effective date and before the end of FY 2023, a certificate holder may claim a tax credit equal to 35% of the dollar amount on the tax credit certificate if the project is located in a county, a township, or a municipal corporation that has a population of less than 300,000, based on the 2020 decennial census. For larger cities and counties, the tax credit equals 25% of the dollar amount on the certificate, the percentage that applies to all rehabilitation tax credits in other years. The bill allows the owner or qualified lessee of a historic building that is approved for a tax credit between June 30, 2020, and the bill’s effective date to reapply for an enhanced tax credit, so long as construction of the project has not yet commenced.

For credits approved in these years, the total tax credit claimed may not exceed \$10 million for any year, up from \$5 million for other years. The enhanced \$10 million annual credit cap prescribed by the bill applies on a per-project basis. Credits in excess of tax liability may be refunded in full. For credits approved in other years, if any portion of the credit is refunded, the amount refunded cannot exceed \$3 million, and any balance of the credit in excess of the amount claimed may be carried forward for not more than five years.

The bill provides that a state historic rehabilitation tax credit certificate is “effective” on the date that all historic buildings rehabilitated by the project are “placed in service,” according to the meaning prescribed by the federal historic building rehabilitation tax credit. The substantive effect of the provision is unclear in terms of when the credit certificate is issued or

when the credit is claimed. However, it might nullify existing authority to issue or claim a credit for completing part of a multi-phase rehabilitation project.

In continuing law, the historic preservation tax credit can be claimed against the state personal income tax, financial institutions tax, and both foreign and domestic insurance premium taxes. The historic preservation tax credit is not transferable, and is to be applied to the tax liability of the applicant, or if the applicant is a pass-through entity,¹ to the partners or members of the pass-through entity.

The bill requires the Director of Development, when considering whether to award a historic rehabilitation tax credit to a historic theater, to consider the potential for increased attendance and gross revenue. In current law, a cost-benefit analysis is already required, for the purpose of determining whether rehabilitation will result in a net revenue gain in state and local taxes when the rehabilitated building is placed in service.² For a building intended to be used as a theater, future returns to the building's owner, and associated income and property taxes, would depend in part on theater attendance and revenue. The provision does not appear to alter the need for such an assessment, as part of the cost-benefit analysis, so appears to have no fiscal effect.

Opportunity Zone credits

The bill expands the Ohio Opportunity Zone Program for the current biennium and FY 2024 only. It allows certificates for Ohio Opportunity Zone tax credits to be issued in a total amount in the FY 2022-FY 2023 biennium of \$75 million or less, up from \$50 million or less in credits claimed in earlier fiscal biennia. It shifts to determination of compliance with the cap based on total credits issued by the Director of Development rather than total credits claimed by recipients. The bill transitions from a biennial cap to an annual cap beginning in FY 2024, when \$50 million in credits may be issued. In subsequent fiscal years the cap is \$25 million in credits issued, approximating the previous cap of \$50 million in credits that could be claimed per biennium. The fiscal effect of this change is a revenue loss of up to \$25 million in the current biennium and \$25 million in the FY 2024-FY 2025 biennium, with the timing of the loss likely to fall mostly in those biennia, but possibly extending to future years.

The bill also allows not only state income taxpayers but also others to earn such credits by investing in projects through these funds. Only state income taxpayers may use the credits. The bill permits the credits to be transferred. It allows a certificate holder to transfer the unused portion of a partially claimed tax credit. It allows a certificate holder to transfer a portion of the tax credit and retain the remainder, or to transfer portions of the tax credit to multiple transferees. It allows the same tax credit, or portion thereof, to be transferred more than once provided each transfer is reported to the Tax Commissioner in the same manner as transfers by the certificate holder under current law. These changes have no specified end date.

Ohio Opportunity Zone tax credits equal 10% of a person's investment in Ohio qualified opportunity funds that are in turn invested in projects located in Ohio Opportunity Zones, areas designated for development under the federal Tax Cuts and Jobs Act of 2017. The Ohio

¹ Pass-through entities (PTEs) include partnerships, limited liability companies, and S-corporations.

² R.C. 149.311(B)(6).

Opportunity Zone tax credit is nonrefundable and may be claimed against the individual income tax. The credit may be claimed by a taxpayer for the year when a qualifying investment is made in a project or for the next year. Any unused credit amount may be carried forward for up to five years.

The bill requires the Director of Development to conduct two annual Opportunity Zone credit application periods for the Ohio Opportunity Zone tax credits, each covering investments by Ohio qualified opportunity funds in Ohio Opportunity Zone projects during the six preceding calendar months. Current law provides for one application period each year. This change appears to have no fiscal effect.

Revenue sharing

Reductions in revenue as a result of the provisions of the bill described above will lower amounts distributed to local governments and public libraries through the Local Government Fund (LGF, Fund 7069) and the Public Library Fund (PLF, Fund 7065). In the current biennium, the PLF receives 1.70% of GRF tax revenue under a provision of H.B. 110 of the 134th General Assembly, the main operating budget. In codified law, both the LGF and PLF receive 1.66% of GRF tax revenue.

All taxes affected by these provisions are considered GRF taxes. If tax revenues in the current biennium decline by \$85 million, distributions to the LGF and PLF will be reduced by a total of about \$2.9 million and amounts remaining for use by the GRF will be reduced by about \$82.1 million.

Provisions affecting TIFs and DRDs

The bill expands the applicability of provisions adopted in H.B. 110 of the 134th General Assembly, the main operating budget, relating to tax increment financing (TIF) districts and downtown redevelopment districts (DRDs). One provision expressly allows subdivisions to use TIF or DRD service payments for off-street parking facilities, including those in which all or a portion of the parking spaces are reserved for specific uses when determined to be necessary for economic development purposes. Another provision allows municipalities that create certain types of TIFs under R.C. 5709.41 the discretion to designate the beginning date of the TIF exemption, rather than start the exemption automatically on the effective date of the designating ordinance. Under current law, these provisions only apply to ordinances adopted after, or proceedings initiated after or in progress on, September 30, 2021 (H.B. 110's 90-day effective date). The bill amends Section 803.210 of H.B. 110 to provide that these provisions may also apply to ordinances or projects completed before that effective date.

This provision of S.B. 225 appears in part to ensure that ordinances adopted by municipalities in anticipation of the amendment of R.C. 5709.41 by H.B. 110 going into effect, but before that change's effective date, would be subject to the amended version of that section. The provision may also expressly authorize uses already made of service payments to pay for off-street parking facilities, prior to the effective date of that additional explicitly permitted use. Although prior law did not expressly allow use of service payments for these facilities, it did allow for uses not limited to those enumerated. For such projects this provision may have no fiscal effect.

Canton Hartford-Houtz Poor Fund

The bill provides that the city of Canton is not to be required to appoint a board of trustees to take charge of the Hartford-Houtz Poor Fund, bequeathed to the city by S.B. 51 of the 63rd General Assembly (1879). It authorizes the city of Canton to distribute all moneys and proceeds bequeathed to the city under S.B. 51 and subsequent amendments, to the Canton Ex-Newsboys Association or any other charitable organization.

Documents associated with this provision of the bill show the principal of this fund was approximately \$100,000 in 2017 and \$67,000 in April 2020. Interest earnings in recent years for distribution to benefit needy children in Canton have been small. The bill relieves Canton of administrative costs associated with oversight of the fund.