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Final Analysis

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UPDATED VERSION*

SUMMARY

Community reinvestment areas

- Extends the authority to designate a community investment area (CRA) to limited home rule townships.
- Eliminates the requirement that the Department of Development (DEV) approve a proposed CRA.
- Requires DEV to prescribe a model CRA exemption agreement for commercial and industrial projects.
- Increases the percentage of a proposed CRA exemption for a commercial or industrial project requiring permission from a school district from 50% to 75%.
- Modifies the requirement that municipalities share municipal income tax revenue from new employees at a large CRA commercial or industrial project with the school district encompassing the project.
- Reduces, from five years to three, the time required 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.
- Eliminates fees paid by CRA commercial and industrial project owners to the local authority and DEV to cover the cost of administering the projects.

* This version updates the effective date.

- Requires DEV to publish the locations of each CRA, as well as all commercial and industrial project exemption agreements, on its website.

Education savings plan income tax deduction

- Expands the income tax deduction allowed for contributions to 529 education savings program, which previously applied only to Ohio's 529 program, to include contributions to other states' 529 programs.

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 the law governing CRAs was significantly updated in 1994, by S.B. 19 of the 120th General Assembly. However, some existing CRAs continue to be governed by law enacted prior to S.B. 19 under an ongoing grandfathering provision.

This act modifies the law governing CRAs, and the terms under which property may be exempted from taxation as part of one. In some cases, these changes restore pre-S.B. 19 provisions.

Limited home rule townships

The act extends the authority to designate CRAs to townships that have adopted limited home rule governments. A limited home rule township may designate CRAs within its unincorporated territory, i.e., territory that is not within a municipal corporation. 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 territory within a limited home rule township. Under the act, a county may not designate any territory that is already part of a CRA designated by a limited home rule township. Likewise, a limited home rule township may not designate 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.

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

² R.C. 504.01, not in the act.

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

State approval of CRAs

The act eliminates the requirement that the DEV Director approve the creation of a CRA proposed by a local authority. (For the purpose of this analysis, a “local authority” is a subdivision authorized to create a CRA, i.e., a county, municipality, or limited home rule township under the act or a county or municipality under prior law.)

Under continuing law, before designating a CRA, a local authority must “survey” any housing located within the area where a new CRA is being proposed, and then adopt a resolution finding that the 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 the resolution and a map of the proposed CRA to the Director to confirm those findings. Under prior law, no CRA exemption could be granted until the Director did 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 DEV; no departmental approval was required.

Because the act eliminates the requirement that DEV approve the creation of a new CRA, it essentially revives pre-S.B. 19 CRA law under which a local authority must send DEV 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.

Prior law prescribed the specific terms that had to be included in exemption agreements, which included, for example, a description of the project and its owner and 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 act authorizes DEV to create, by rule, a model agreement. Local authorities may use the model agreement or create their own CRA agreements, but any locally created agreement must include the terms and statements required by law for the model agreement, as described below. Any additional terms in a locally

⁴ R.C. 3735.66.

created CRA agreement that are not included in the model agreement must not conflict with CRA law. Although DEV may include any terms it considers necessary in the model agreement, it must at least include the following terms, many of which were required to be included in each agreement in some form under prior 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. Prior law imposed a similar requirement.
- A requirement that the owner, at the time the agreement is executed, not owe any delinquent property or state taxes. Prior law imposed a similar requirement.
- A prohibition on transferring the agreement to a new owner without the local authority's approval. Prior law imposed 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 – with any information it requires to evaluate the applicant's agreement compliance. Prior law imposed 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 was required under prior 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 was required under prior law.

Several terms that were required in each agreement under prior law, including those related to duties of the local authority and enforcement of the agreement, need not be included in the model agreement. Once DEV prescribes the model agreement, it may only alter its contents through the rulemaking process.⁵

School board approval

The act increases the percentage of a CRA commercial or industrial project that may be exempted from taxation without obtaining approval from the board of education for the school district that encompasses the CRA. Under prior law, if an agreement granting CRA exemption to a commercial or industrial project proposed to exempt more than 50% of the project's value, the agreement had to be approved by the appropriate board of education. However, no permission was required if the board adopted a resolution waiving its right to approve such agreements or if the district was compensated by the local authority or the project owner in an

⁵ R.C. 3735.671(A) and (B).

amount that would hold the district harmless for excess revenue forgone as a result of the exemption percentage above the 50% threshold.

The act increases the threshold exemption percentage that triggers the board approval requirement to 75%. Permission is still not required if the board 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 above the 75% threshold.⁶

School district compensation

The act increases the amount of new-employee payroll for a CRA commercial or industrial project that triggers a continuing requirement that a municipality provide annual compensation to the appropriate school district. Under prior law, if a CRA project resulted in new-employee payroll of at least \$1 million in any year and the municipality was unable to negotiate a voluntary compensation agreement with the school board, the municipality was required to make annual payments to the school board equal to 50% of the difference between municipal income taxes collected from new employees involved in the project minus infrastructure costs the municipality incurred for the benefit of the project. This compensation requirement applied 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 act 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 act also indexes the \$2 million CRA threshold for inflation. DEV will calculate the new threshold amount annually by multiplying the current threshold by the percentage increase, if any, in the gross domestic product (GDP) deflator – a metric calculated by the U.S. Department of Commerce to measure inflation – over the preceding year and adding that result to the current threshold. After making this calculation, DEV must certify the new threshold amount to each municipal corporation that designates a CRA.⁸

Project discontinuation or relocation

The act modifies the consequences if a commercial or industrial project discontinues or relocates its operations in a CRA before the CRA exemption term ends. Under prior law, if the owner of a commercial or industrial project subject to a CRA exemption discontinued its operations before the end of the CRA's term, that owner, as well as any of its successors or related entities, were ineligible to receive another CRA exemption or an enterprise zone

⁶ R.C. 3735.671(A); R.C. 3735.67(A), not in the act.

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

⁸ R.C. 5709.82(C) to (E).

exemption for five years. The act reduces that period to three years.⁹ No such penalty was imposed under pre-S.B. 19 CRA law.

Annual report

Prior law required a local authority to submit an annual report to DEV, as well as each school district with territory in the CRA, by March 31. The report had to contain details on each exemption agreement entered into with an industrial or commercial project.

The act removes the requirement that the report be submitted to school districts and modifies the content required to be included in each report as described in the following table.¹⁰

Annual report contents	
Prior law	The act
Identify each designated CRA with an identification number assigned by DEV.	Identify the total number of designated CRAs.
Identify the total number of agreements for commercial and industrial projects in each CRA, and list 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.	Identify the total number of such agreements.
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.	Identify the number of agreements with which a party has failed to comply, including the property value exempted pursuant to each such agreement and a comparison between the project's actual and estimated new or retained employees.
State which CRA commercial and industrial projects have expanded their hiring or retention targets.	No requirement.
State the amount of taxes forgone by each project or the increase in a project's employment after the CRA exemption begins to apply.	No requirement.

⁹ R.C. 3735.671(E).

¹⁰ R.C. 3735.672(A).

The act also removes a separate requirement for a local authority to specially notify DEV of changes in zoning restrictions within a CRA. Instead, this information must be included in the annual report.¹¹ 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.¹²

In addition, the act requires local authorities to submit commercial and industrial CRA agreements to DEV at the same time as the annual report. Prior law required local authorities to forward them shortly after execution.¹³

Fees

The act eliminates the following fees previously charged to owners of commercial and industrial projects covered by CRA agreements:

- An annual fee of up to the lesser of \$2,500 or 1% of the 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 DEV to apply toward its costs to administer the CRA program and other tax incentives.¹⁴

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

CRA website information

The act requires DEV to publish and annually update on its website the locations of each CRA within the state, as well as copies of the resolution authorizing the CRA and the exemption agreement for each commercial or industrial project.¹⁵ DEV already maintained such a website, but it was not required to do so under prior law.¹⁶

Education savings plan income tax deduction

Continuing Ohio law allows a state income tax deduction for contributions to Ohio's 529 plan, known as "CollegeAdvantage." The act extends the deduction so that it applies as well to contributions to any 529 plan established by another state or by an educational institution. As with contributions to Ohio's plan, the deduction is limited to \$4,000 per beneficiary per year for the taxpayer or the taxpayer and the taxpayer's spouse, regardless of whether they file

¹¹ R.C. 3735.66 and 3735.672(A)(5).

¹² R.C. 3735.672(B).

¹³ R.C. 3735.671(F) and 3735.672(A)(6).

¹⁴ R.C. 3735.671(D) and 3735.672(C).

¹⁵ R.C. 3735.672(C).

¹⁶ See DEV's [Community Reinvestment Area Agreement Information](#), which may be accessed by conducting a keyword "CRA" search on DEV's website: development.ohio.gov.

separate returns or a joint return. Annual contributions exceeding \$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 or after 2023.¹⁷

By way of background, 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 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.¹⁸ 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.

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	12-14-22
Passed House (56-32)	12-14-22
Senate concurred in House amendments (24-6)	12-14-22

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

¹⁸ 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.