Ohio Legislative Service Commission

Bill Analysis

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Sub. S.B. 235*

131st General Assembly
(As Reported by H. Finance)

Sens. Beagle and Coley, Eklund, Patton, Seitz

BILL SUMMARY

Taxation

Property tax

- Authorizes local governments to approve property tax exemptions for the increase in value of property planned for commercial or industrial development while the property is in the pre-development stage.
- Terminates the exemption once an occupancy permit is issued, the title is transferred, disqualifying zoning regulations are imposed, or any commercial, industrial, or agricultural operations occur there.
- Requires property taxes to be current as a condition for the exemption.
- Imposes a three-year tax penalty on property subject to the exemption if the title is transferred before any improvements are made or if any commercial, industrial, or agricultural operations occur before an occupancy permit is issued.
- Permits a downtown redevelopment district to include property that was previously part of a tax increment financing district.

Tax credits

- Discontinues the historic rehabilitation tax credit for "catalytic projects" after the FY 2016-2017 biennium.

* 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.

- Requires the Director of Development Services to approve the application of each qualified person who applied for a catalytic project tax credit in the FY 2016-2017 biennium, but was not awarded one.

- Requires the Director to grant a motion picture tax credit for FY 2018 to a company producing a television program during the first six months of 2017.

Sales and use tax

- Exempts from sales taxation the sale of music from a jukebox, arcade machine, or similar amusement or entertainment device.

- Modifies the sales and use tax exemption for property used in producing oil and natural gas.

- Requires a purchaser of employment services that claims exemption from sales or use tax to furnish an exemption certificate to the service provider, i.e., an employment agency.

Water pollution control facilities

- Specifies that the Department of Natural Resources is an agency qualified to approve water pollution control facilities for the purpose of property tax exemption and sales and use tax exemption for the property incorporated into such facilities.

Small business investment companies

- Exempts small business investment companies from the financial institutions tax both prospectively and retrospectively to the first year that tax was levied (2014).

Municipal Income Tax Net Operating Loss Committee

- Modifies the information that municipalities must report to the Municipal Income Tax Net Operating Loss Committee, and extends the deadline by which the Committee must complete its work.

Unemployment compensation

- Raises, for a two-year period, the taxable wage base used for the payment of unemployment contributions from $9,000 to $9,500.

- Eliminates the unemployment contribution rate increase for paying principal on federal advances.

- Freezes, for a two-year period, the maximum weekly unemployment benefit amounts at the maximum benefit amounts in effect on the bill's effective date.

Climbing facility requirements

- Establishes duties for rock climbers, climbing facility operators, and climbing facility employees while climbing or working in a climbing facility.

- Requires climbing facility operators to obtain liability insurance to cover the climbing facility and file with the Department of Commerce a certificate of insurance evidencing the coverage.

- Creates an express assumption of risk on the part of a climber with respect to an injury sustained while climbing that is a complete defense in a lawsuit brought by a climber against the climbing facility operator for injuries sustained while climbing.

- Prohibits a climbing facility owner from engaging in facility operations if the insurance policy is cancelled or lapses.

- States the General Assembly's findings with respect to climbing and notes that the bill is in the public interest.

Pawnbroker regulations

- Specifies that a pawnbroker must obtain a separate license for each place of business.

- Increases the amount of liquid assets or surety bonds a licensed pawnbroker is required to maintain.

- Increases the amount of interest and fees a pawnbroker can charge for a loan.

- Eliminates a pawnbroker's authority to charge a fee for a lost pledge statement.

- Eliminates the requirement that a pawnbroker retain pledged goods for 72 hours after the pledge is made and permits a pledgor to redeem a loan any time after the pledge is made.

- Prohibits prepayment of interest and storage charges at the time a pawn loan is originated.

- Reduces the continuing education requirements for pawnbrokers from 12 to 8 hours and repeals other current law requirements relating to continuing education.

Grants for major sports events

- Provides for the ongoing reappropriation of money set aside to fund grants to local governments hosting major sporting events but remaining unspent at the end of a fiscal year.

Animal control

- Applies the law governing animals running at large to all poultry, rather than only to geese as under current law, while retaining the application of that law to horses, mules, cattle, bison, sheep, goats, swine, llamas, and alpacas.

Use of municipal water and sewer funds

- Reauthorizes municipal corporations in Stark County to use up to 5% of the money in their water and sewer funds for system extensions under certain circumstances and for a limited period of time.

Hospital board meetings

- Authorizes boards of county hospital trustees, boards of hospital commissioners, and boards of governors of municipal hospitals to attend board meetings by means of communications equipment, regardless of the Open Meetings Act's requirement that a board member be present in person.

- Requires those boards to adopt rules that designate the communications equipment authorized for use during board meetings, that establish procedures and guidelines for its use, and that ensure verification of the identity of board members attending board meetings using communications equipment.

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CONTENT AND OPERATION

Property tax exemption for land in the pre-development stage

The bill authorizes a municipal corporation, township, or county to approve a property tax exemption for increases in the value of a parcel of land while it is in the pre-development stage. The exemption applies to (1) a parcel that has not yet been, but will be, developed for commercial or industrial use and (2) a parcel containing existing commercial or industrial property that is no longer in use, but for which redevelopment is planned (hereafter both are referred to as "qualifying parcels"). A parcel does not qualify if it will be used, in whole or part, for residential purposes.

Application process

To receive the exemption, a qualifying parcel's owner must apply to the political subdivision in which the parcel is located – the municipal corporation if the parcel is located in a municipal corporation or the township or county if it is located in unincorporated territory. But if the parcel is already subject to a tax increment financing (TIF) exemption, the owner must apply to the municipal corporation, township, or county that authorized the TIF exemption. Additionally, a township may not exempt a parcel already exempted by a county, and vice versa.

As part of the exemption application, the parcel owner must certify that applicable zoning regulations do not prohibit the construction or redevelopment of a commercial or industrial building on the parcel and must include a statement from the county treasurer certifying that the parcel is not subject to a lien for delinquent property taxes or special assessments.

If the application is complete and the local government intends to grant the exemption, the local government must notify the school district and joint vocational school district in which the parcel is located of its intent to do so. A township or county must additionally notify the county or township, respectively, in which the parcel is located of its intent to exempt the parcel. Following these notifications, the local government may adopt an ordinance or resolution exempting the increase in the value of the qualifying parcel for six years. Granting the exemption is entirely at the discretion of the local government but, once granted, the exemption continues for the six-year period unless a disqualifying event occurs sooner with respect to the parcel (see below). To effect the exemption, the owner still must file with the Tax Commissioner the same application required for most property tax exemptions.[1]

Local governments may approve exemptions for any tax year after 2016.[2]

Disqualifying event

The exemption begins in the tax year in which the local government approves the exemption or the next tax year. The exemption ends the sooner of six tax years later or with the tax year in which one of the following disqualifying events occurs:

(1) The owner receives a certificate of occupancy for the property;

(2) Commercial, agricultural, or industrial activities occur on the property;

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[1] R.C. 5709.52(B), (C), and (E).

[2] Section 5.

(3) The owner transfers title of the property to another person;

(4) The property is zoned or re-zoned such that the construction of a commercial or industrial building is no longer allowed.

If a qualifying parcel is subdivided during the term of the exemption, the exemption continues to apply to the subdivided parcels that are constituted entirely of the original parcel for the remaining period of the original exemption or until one of the above disqualifying events occurs with respect to the parcel before the end of the period.[3]

Recoupment charge

The bill imposes a tax penalty if the qualifying parcel's owner sells the parcel without making improvements to it while the property is exempted or if commercial, agricultural, or industrial operations begin on the parcel before an occupancy permit is issued. The charge equals the amount of taxes that would have, but were not, levied against the parcel because of the exemption during the three years before one of those events occur. The charge is enforced and collected as property tax and paid proportionally to local taxing units.[4]

Downtown redevelopment districts: previously exempted parcels

The bill permits a downtown redevelopment district (DRD) to include property that was previously part of a TIF district. DRDs are an economic development tool similar to TIFs that can be used by a municipal corporation to encourage the rehabilitation of historic buildings and economic development in commercial and mixed-use areas. A percentage of the increased value of parcels located within the DRD is exempted from property taxation and the owners of those parcels make service payments in lieu of taxes. The revenue derived from the service payments must be used by the municipal corporation for the economic development purposes described in the municipality's development plan for the DRD.

Current law prohibits a DRD from including any parcel that has ever been exempted from taxation as part of a TIF or DRD. The bill allows for the inclusion of previously exempt parcels so long as they are not tax-exempt on the effective date of the DRD ordinance.[5]

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[3] R.C. 5709.52(C) and (D).

[4] R.C. 5709.52(F).

[5] R.C. 5709.45(B).

Historic building rehabilitation tax credit for "catalytic projects"

The bill discontinues the "catalytic project" historic rehabilitation tax credit program after FY 2017. The bill also requires the Director of Development Services to approve the application of each qualified person who applied for a catalytic project tax credit in the FY 2016-2017 biennium, but was not awarded one.

Current law

Under current law, the Development Services Agency is permitted to issue one historic building rehabilitation tax credit certificate per fiscal biennium to the owner of a "catalytic project." The certificate may allow a credit of up to $25 million for the owner's qualified rehabilitation expenditures, instead of the $5 million cap that applies to other projects, although the owner is limited to claiming only $5 million of the total certificate amount per year.

To qualify as a catalytic project, the rehabilitation of the historic building must foster economic development within 2,500 feet of the building. The project must also meet all of continuing law's other requirements for the historic building rehabilitation tax credit.[6]

Changes to the catalytic project credit

The bill discontinues the catalytic project tax credit certificate program after the 2016-2017 biennium.[7]

The bill also requires the Director of Development Services to approve the application of each qualified person who applied for a catalytic project tax credit certificate in the 2016-2017 biennium, but was not awarded one. To this end, the bill waives the one-project limit for that biennium.

The Director must award the credits within 30 days of the bill's effective date. The credit equals the lesser of (a) 25% of the applicant's qualified rehabilitation expenditures, (b) one-half of the amount of credits that could have been, but were not, claimed with respect to projects that were approved during the FY 2008 application period but were not completed, or (c) $25 million. The credits are subject to the $60 million cap on the total amount of historic building rehabilitation tax credits that may be awarded per year.[8]

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[6] R.C. 149.311(A)(10), (D)(5) and (6), and (H).

[7] R.C. 149.311(D)(6).

[8] Section 3.

Motion picture tax credit

The bill requires the Director of Development Services to grant a motion picture tax credit to a company that produces a television program in Ohio during the first six months of the 2017 calendar year. Continuing law authorizes a motion picture company that produces at least part of a motion picture in Ohio and incurs at least $300,000 in Ohio-sourced expenditures to apply to the Director for a refundable credit against the commercial activities tax, financial institutions tax, or personal income tax. Generally, credits are issued at the Director's discretion. The total amount of credits that may be issued by the Director is limited to $40 million per fiscal year.[9]

The credit described by the bill would not be discretionary and would count towards the annual credit cap for FY 2018, even though it would be based on production expenditures incurred during FY 2017. The credit would be limited to $12 million and could not be claimed by the motion picture company before July 1, 2017.[10]

Sales tax exemption for amusement devices

Current law was recently changed to impose state and local sales tax on "specified digital products," i.e., music, multimedia, and digital books, that are transferred to the purchaser electronically. The bill exempts from sales tax specified digital products purchased and delivered electronically via an amusement or entertainment device that accepts direct payments.[11] An example of such a machine is a jukebox that accepts cash or credit card payments to play digital music or an arcade machine that accepts such payments to play a digital arcade game. The exemption begins on the first day of the first month beginning after the bill's effective date.[12]

The bill does not exempt purchases from an amusement or entertainment device that operates by playing "tangible storage media" – e.g., vinyl records, compact discs, or a circuit board. Such purchases would not be delivered electronically and are not subject to sales tax under continuing law.

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[9] R.C. 122.85, not in the bill.

[10] Section 8.

[11] R.C. 5739.02(B)(55).

[12] Section 7.

Sales tax exemption for oil and gas production property

The bill modifies the existing sales and use tax exemption for property used directly in producing oil and natural gas, but the bill's effect on the scope of the exemption is not apparent from the statutory language. Existing law exempts sales of tangible personal property used "directly" in the production of crude oil or natural gas.

The bill specifies that this includes production operations as that term is defined for the purposes of the oil and gas regulation law (R.C. Chapter 1509.).[13] The term broadly refers to "all operations and activities and all related equipment, facilities, and other structures that may be used in or associated with the exploration and production of oil, gas, or other mineral resources" that are regulated by the Department of Natural Resources, including "operations and activities associated with site preparation, site construction, access road construction, well drilling, well completion, well stimulation, well site activities, reclamation, and plugging," and specifically the following:

- The piping, equipment, and facilities used for the production and preparation of hydrocarbon gas or liquids for transportation or delivery;

- The processes of extraction and recovery, lifting, stabilization, treatment, separation, production processing, storage, waste disposal, and measurement of hydrocarbon gas and liquids, including related equipment and facilities;

- The processes and related equipment and facilities associated with production compression, gas lift, gas injection, fuel gas supply, well drilling, well stimulation, and well completion activities, including dikes, pits, and earthen and other impoundments used for the temporary storage of fluids and waste substances associated with well drilling, well stimulation, and well completion activities;

- Equipment and facilities at a wellpad or other location that are used for the transportation, handling, recycling, temporary storage, management, processing, or treatment of any equipment, material, and by-products or other substances from an operation at a wellpad that may be used or reused at the same or another operation at a wellpad or that will be disposed of in accordance with applicable laws and rules adopted under them.

[13] R.C. 5739.02(B)(42)(a).

The bill specifically excludes from exemption any tanks or other storage devices for holding hydraulic fracturing fluid, earth moving and reclamation equipment at a well site, or any property used to move other equipment to or from a well site or to store equipment before it is used at a well site.

The bill states that the modification of the exemption language is intended to be "remedial" and is to apply both prospectively and retrospectively to June 30, 2010. That date is the effective date of legislation that first defined "production equipment" for the oil and gas regulation law and otherwise made numerous changes to that law in the wake of the broad emergence of horizontal hydraulic fracturing methods in Ohio (S.B. 165 of the 128th General Assembly).[14] To the extent that the bill's modification of the exemption broadens the scope of the existing exemption, transactions that were taxable between June 30, 2010, and the bill's effective date presumably would be deemed to be tax-exempt.

Sales tax on employment services

The bill requires a purchaser of employment services, i.e., a client, to furnish an exemption certificate to the service provider, i.e., an employment agency, if the client claims the transaction is exempt from sales and use tax. An exemption certificate specifying the reason the transaction is exempt from the tax relieves the employment agency from liability for collecting and remitting tax on the sale. If an audit later reveals that the sale should have been subject to the tax, any assessment must be made against the client and not the employment agency. Continuing law requires exemption certificates for tax – exempt transactions involving many other goods and services.[15] This requirement applies to sales of employment services after December 31, 2016.[16]

Employment services—transactions in which an employment agency furnishes personnel to perform work under the supervision or control of a client—have been subject to sales and use tax since 1993.[17] However, transactions between members of an affiliated group, medical and health care services, contracting and subcontracting services, the permanent assignment of an employee over a contract of at least one year are not taxable "employment services," and transactions in which the purchaser is

[14] Section 4 of the bill.

[15] R.C. 5739.03(B).

[16] Section 11.

[17] Ohio Department of Taxation, "ST 1993-08 – Employment Service," available at: http://www.tax.ohio.gov/sales_and_use/information_releases/st199308.aspx (last accessed December 6, 2016).

another employment agency that will immediately assign the personnel to a third party client are not taxable employment services.[18]

Tax treatment of water pollution control property

The bill specifies that the Department of Natural Resources is an agency qualified to approve water pollution control facilities for the purpose of exemptions from property tax and sales and use tax for such facilities and the property incorporated into them.[19] Current law provides that the Ohio Environmental Protection Agency is qualified to make such approvals, as is "any other governmental agency having authority to approve installation of" such facilities. As with the bill's sales tax exemption for oil and gas production operations property, the bill states that this change is "remedial" and applies retrospectively to June 30, 2010, although the substantive effect of this is not clear.

Taxation of small business investment companies

The bill exempts small business investment companies (SBICs) from the financial institutions tax (FIT).[20] The exemption applies both prospectively and retrospectively back to January 1, 2014, when the FIT was introduced.[21]

The FIT is a tax on banks and other kinds of financial institutions. Tax liability is determined on the basis of the portion of an institution's equity capital attributable to its Ohio business, as measured by the relative amount of its gross receipts that arise from Ohio operations. The tax rate is tiered according to an institution's Ohio equity capital: the rate is 0.8% on the first $200 million, 0.4% on the next $1.1 billion, and 0.25% for equity capital in excess of $1.3 billion. The minimum tax is $1,000. All revenue from the tax is credited to the General Revenue Fund.[22]

Small business investment companies

A small business investment company is a privately owned and managed investment fund licensed under federal law. An SBIC uses its own capital and, in most cases, securities guaranteed by the United States Small Business Administration to lend

[18] R.C. 5739.01(JJ).

[19] R.C. 5709.20.

[20] R.C. 5726.01.

[21] Section 6.

[22] R.C. Chapter 5726.

to and make equity investments in qualifying small businesses.[23] Up to two-thirds or three-fourths of their capital may be from the SBA-guaranteed securities, depending on prior fund management experience. Their investments generally are restricted to small businesses – i.e., those having maximum net worth of $19.5 million and net income of $6.5 million – and one-fourth of each SBIC's investments must be in even smaller businesses having maximum net worth of $6 million and net income of $2 million. SBICs are usually structured as limited partnerships with the investment manager serving as the general partner.

Residual tax status of SBICs

Any financial institution that is subject to the FIT is exempted from the commercial activity tax (CAT), which is a general tax on the gross receipts of all businesses that are not expressly exempted. One implication of being exempted from the FIT is, technically, to become subject to the CAT.[24] However, SBICs are structured in such a way that most of their income is investment income that is distributed to partners and which generally is not subject to the CAT. They would have some income as management fees but, to be taxable under the CAT, the fees would have to be at least $150,000.[25]

Municipal Income Tax Net Operating Loss Committee

The bill modifies the information that municipal corporations must report to the Municipal Income Tax Net Operating Loss Committee, and extends the various deadlines by which the Committee must complete its work. The Committee was created in H.B. 5 of the 130th General Assembly to evaluate and quantify the potential financial impact of requiring municipal corporations to allow net operating losses (NOLs) to be carried forward for five years, as required in H.B. 5.[26]

Municipal reporting requirements

Under current law, every municipal corporation that levied an income tax in 2011, 2012, or 2013 must report revenue information to the Committee. The bill only

[23] 15 U.S.C. 661 *et. seq*.

[24] R.C. 5751.01(E)(3).

[25] R.C. 5751.01(E)(1).

[26] Section 4 of Sub. H.B. 5 of the 130th General Assembly.

requires reporting from municipal corporations that did not allow an NOL carryforward before H.B. 5 took effect.[27]

Under the bill, each such municipal corporation must report the difference between (1) the municipal corporation's actual revenue in 2018 and 2019 and (2) the amount of revenue the municipal corporation would have received in 2018 and 2019 if it did not have an NOL carryforward. Current law requires a similar calculation, but for the years 2012 through 2018, requiring the compilation of historical collections and the projection of future collections.

At a May 2016 meeting, the Committee adopted a microsimulation model for municipal corporations to use when making the calculations required in H.B. 5. The bill requires that municipal corporations also use this model to do the updated calculations.

The bill extends the deadline by which municipal corporations must report their calculations, from December 31, 2016,[28] to August 31, 2021.[29]

Committee report

Correspondingly, the bill extends the deadline by which the Committee must issue a report of its findings, from May 1, 2017, to May 1, 2022. The Committee will cease to exist after that date. Because the report deadline and the Committee's life are extended, the bill converts into permanent, codified law the H.B. 5 uncodified law creating the Committee and providing for its operation.

The bill also removes a provision that would excuse the Committee from calculating the total revenue effects of H.B. 5's NOL carryforward requirement if fewer than 13 municipal corporations report information.[30]

Unemployment compensation

Taxable wage base

Ohio's unemployment compensation system consists of two types of employers: contributory employers, who are mostly private sector employers who pay contributions into the Ohio Unemployment Compensation Fund (the Fund), and reimbursing employers, who are mostly public sector employers and certain nonprofits

[27] R.C. 718.60(C)(1).

[28] Section 3 of Sub. H.B. 182 of the 131st General Assembly.

[29] R.C. 718.60(C)(2).

[30] R.C. 718.60(D).

who reimburse the Fund when benefits are paid. With respect to contributory employers, to determine the amount of the employer's contribution, the Director of Job and Family Services (Director) determines the employer's contribution rate and applies it in the following calendar year to the wages of each of the employer's employees.[31] But contributions are payable on employee wages only up to the "taxable wage base," which is currently $9,000. Wages paid by an employer to a particular employee in excess of the taxable wage base are not subject to contribution.

Beginning January 1, 2018, the bill raises the taxable wage base from $9,000 to $9,500 and returns the taxable wage base to $9,000 on January 1, 2020.[32]

Contribution rate increase to pay principal on federal advances

The bill eliminates a current law contribution rate increase that is imposed for the purpose of paying principal on federal advances (essentially, loans) from the federal government for the payment of unemployment benefits. The eliminated provision requires, if as of the computation date, Ohio has an outstanding balance on federal unemployment advances, all experience-rated contributory employers be subject to a contribution rate increase, as determined by the Director, in an amount up to ½ of 1%, for the purpose of eliminating the principal of the outstanding advance balance.[33]

Maximum benefit amounts

The bill temporarily freezes the maximum weekly benefit amount any individual may receive. Under current law, weekly benefit amounts are generally 50% of an individual's average weekly wage during the individual's base period up to a statutory maximum. Current law statutory maximums are based on the number of allowable dependents claimed as follows:

- If an individual has no dependents, 50% of the statewide average weekly wage ($435 in 2016).
- If an individual has one or two dependents, 60% of the statewide average weekly wage ($527 in 2016).

[31] R.C. 4141.25 and Ohio Administrative Code 4141-9-02 and 4141-11-02.

[32] R.C. 4141.01(G).

[33] R.C. 4141.25(B)(7), repealed.

- If an individual has three or more dependents, 66⅔% of the statewide average weekly wage ($587 in 2016).[34]

Continuing law requires the Director to determine the statewide average weekly wage each year based on the average weekly earnings of all workers in employment subject to Ohio's Unemployment Compensation Law during the preceding 12-month period ending June 30.

Beginning January 1, 2018, and ending January 1, 2020, the bill freezes the maximum benefit amount an individual may receive at the amounts in effect on the bill's effective date.[35]

Manufactured climbing wall facilities

The bill establishes regulations and safety requirements for individuals operating, working at, and climbing artificial rock climbing walls at a climbing facility. A "climbing facility" is a premises used by the public, not located in an amusement park or carnival or on public land, that is designed and built for the sport of rock climbing, recreational climbing, or competitive climbing, including ascending, descending, and traversing over simulated rock surfaces that use belay systems in their normal operation. A manufactured rock climbing wall in a climbing facility is not an "amusement ride" for the purposes of the Amusement Ride Law.[36]

Climbing facility operator duties

The bill establishes duties that the owner, manager, or person who has operational responsibility for a climbing facility (climbing facility operator) must follow.[37] A climbing facility operator must:

- Maintain liability insurance covering the facility;

- Comply with all manufacturer instructions regarding (1) the manufactured climbing wall and (2) any climbing facility-owned personal

[34] R.C. 4141.30 and Ohio Department of Job and Family Services, *Benefits Chart*, http://unemployment.ohio.gov/PDF/Benefits_Estimator.pdf (accessed December 6, 2016).

[35] R.C. 4141.30.

[36] R.C. 1711.50, 1711.57, and 4715.01(C).

[37] R.C. 4715.01(A).

protective equipment (clothing, harnesses, or other items designed to protect a climber while rock climbing);[38]

- Post in a conspicuous location rules and warnings for climbers and spectators;

- Conduct an orientation of the facility for all climbers;

- Maintain facility walls, flooring, and equipment in serviceable condition;

- Conduct criminal history inquiries of all adult applicants for employment. The climbing facility owner must require each applicant over age 18 to consent to a criminal records check conducted by the Bureau of Criminal Investigation and Identification.

- Maintain sufficient staffing at the facility;

- Maintain sufficient records for the facility, including (1) all purchases of facility-owned personal protective equipment and (2) all inspections of the manufactured climbing wall and facility-owned personal protective equipment;

- Comply with applicable state and local building, fire, and zoning requirements;

- Conduct inspections of the climbing wall per manufacturer's instructions or every four years, whichever is sooner. Such inspections are to be conducted by the manufacturer, the manufacturer's representative, or a licensed professional engineer and evidence of the inspection must be filed with the Department of Commerce.[39]

Climbing facility employee duties

The bill requires climbing facility employees to have adequate knowledge of certain things related to the facility, including:

- The manufactured climbing wall, including any manufacturer requirements;

- Any facility-owned personal protective equipment;

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[38] R.C. 4715.01(E).

[39] R.C. 4175.03.

- The locations of all safety equipment;
- The facility's emergency procedures.[40]

Climbing facility employees must perform a daily pre-use visual inspection of the climbing facility.[41]

The bill prohibits any climbing facility employee from working at the facility while under the influence of drugs or alcohol.[42]

The bill also imposes duties on floor supervisors. While on duty, floor supervisors must:

- Be in a position to observe the facility;
- Monitor activity in the facility;
- Assist climbers in following their duties;
- Issue warnings, reprimands, or penalties for climbers who violate the climber duties established under the bill (see "**Climber duties**" below).

The bill prohibits a person from acting as a floor supervisor unless the person has received appropriate training to meet the above duties.[43]

Climber duties

Under the bill, each climber assumes the risks of climbing, of which a reasonably prudent person is aware. The bill requires each climber to:

- Read all warnings and obey all rules of the climbing facility;
- Obey all warnings and instructions of facility staff;
- Read and follow the manufacturer's instructions for the personal protective equipment used by the climber;

[40] R.C. 4175.04(A).

[41] R.C. 4175.04(B).

[42] R.C. 4175.04(E).

[43] R.C. 4175.04(C) and (D).

- Prior to each use, inspect any personal protective equipment used by the climber, and replace the equipment as necessary;
- Refrain from acting in a manner that may cause injury to the climber or others;
- Exercise good judgment and act in a responsible manner while climbing.

The bill prohibits a climber from climbing while under the influence of drugs or alcohol.[44]

Climber assumption of risks

Under the bill, climbers have knowledge of and expressly assume the risks and legal responsibility for any losses that result from climbing. Losses can result from:

- Falls and crashes into the climbing wall or other obstacles;
- Risks associated with crossing or climbing up or down;
- Equipment failure;
- The climber's physical strength and abilities;
- Fatigue, chill, or dizziness;
- The actions of other individuals that are not a breach of the climbing facility operator's duties (see "**Climbing facility operator duties**" above).[45]

Assumption of risk as a defense

The express assumption of risk described above is a complete defense against liability in a civil action against a climbing facility operator by a climber for injuries sustained from the assumed risks of climbing. The contributory negligence provisions of Ohio's Civil Law do not apply to these actions. However, contributory negligence does apply if the operator has breached one of the operator's duties described above.[46]

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[44] R.C. 4175.05.

[45] R.C. 4175.05(A) and 4175.06.

[46] R.C. 4175.07.

Insurance coverage requirements

The owner of a climbing facility must file with the Department of Commerce a certificate of insurance demonstrating that each climbing facility owned by the owner has current, valid liability insurance. The insurance must be purchased from an insurer authorized to write that type of insurance in Ohio.

The bill establishes minimum coverage amounts for the liability insurance as follows:

- Not less than $500,000 for bodily injury or death of one person in any occurrence;
- Not less than $1 million because of bodily injury or death of two or more persons in each occurrence.[47]

The insurance policy can include a deductible requirement, provided that any settlement by the insurance company is paid as though the deductible did not apply.[48]

Failure to file a certificate of insurance

If the climbing facility owner fails to file with the Department a certificate of insurance for new or replacement insurance, the owner must cease all facility operations immediately upon the cancellation or lapse of the previous insurance.[49]

Policy terms

The insurance policy must obligate the insurer to:

(1) Not cancel the policy without 30 days' notice and a complete description of the reason for the cancellation;

(2) Report within 24 hours to the Department if the insurer pays a claim or reserves any amount to pay an anticipated claim that reduces the liability coverage to a limit of less than $1 million because of bodily injury or death to two or more persons in each occurrence.[50]

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[47] R.C. 4175.08(A) and (B).

[48] R.C. 4175.08(C).

[49] R.C. 4175.08(F).

[50] R.C. 4175.08(D).

Cancellation or lapse of policy

If the insurance policy is cancelled or lapses for any reason, the climbing facility owner must replace the policy with another policy fully complying with the bill's requirements. The new coverage must be obtained by the owner prior to allowing a climber to use the climbing facility.[51]

General Assembly's intent and findings

The bill enumerates the General Assembly's findings with respect to rock climbing and notes that rock climbing is a wholesome and healthy activity that should be encouraged. However, because rock climbing has inherent risks that should be managed, the regulatory scheme established in the bill is in the public interest.[52]

Pawnbroker regulations

Licensure for multiple business locations

The bill requires each person to obtain a separate license for each place of business where the person acts or transacts business as a pawnbroker.[53] This clarifies, rather than changes, the operation of the Pawnbroker Law.

Liquid asset and bond requirements

The bill increases the amount of liquid assets that an applicant for a pawnbroker's license must demonstrate the ability to maintain from $100,000 to $125,000. Additionally, the bill increases the amount of liquid assets and surety bonds that a licensed pawnbroker must maintain in order to conduct business in Ohio. Under the bill, a pawnbroker is required to (1) maintain liquid assets of at least $75,000, increased from $50,000 under current law, or (2) obtain a surety bond meeting certain requirements in the sum of at least $50,000, increased from $25,000 under current law.[54]

Interest and fees

The bill also increases the interest rates and fees a licensed pawnbroker can charge. The bill prohibits a pawnbroker from charging interest more than 6% per month for any loan. Current law prohibits interest more than 5%.

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[51] R.C. 4175.08(E).

[52] R.C. 4715.02.

[53] R.C. 4727.02 and 4727.03(A)(4).

[54] R.C. 4727.03(A)(4) and 4727.20(A).

Additionally, the bill modifies the fees a pawnbroker can charge as follows:

- Increases from $4 to $6 per month the fee for all pledged articles held as security or stored for a loan;
- Increases from $2 to $5 the fee for the cost of notifying the pledgor by mail that the pledged articles may be forfeited to the pawnbroker in accordance with the Pawnbroker's Law.
- Increases from $2 to $10 the fee for providing services for compliance with the federal Brady Handgun Violence Protection Act;
- Eliminates the $2 fee for a lost pledge statement issued by the pawnbroker.[55]

Prohibited pledgors

The Pawnbroker's Law prohibits a licensed pawnbroker from receiving any pledge or purchasing any articles from:

- A minor;
- Any person who is at the time intoxicated or under the influence of a controlled substance;
- Any person who is known or believed by the pawnbroker to be a thief or receiver of stolen property;
- Any person identified to the licensee by certain local law enforcement officials as a known or suspected thief or receiver of stolen property.

The bill retains this list of prohibited pledgors or sellers, and prohibits the conduct if the pawnbroker recklessly pledges or purchases from the prohibited persons. For existing offenses, when language defining an element of an offense that is related to a criminal mental state could fairly be applied neither specifies culpability nor plainly indicates a purpose to impose strict liability, the element of the offense is established only if a person acts recklessly.[56]

[55] R.C. 4727.06(A), (B), and (C).

[56] R.C. 4727.10 and R.C. 2901.21(C), not in the bill.

Holding pledged or purchased items

The bill eliminates the requirement that a licensed pawnbroker retain any and all pledged goods or articles until 72 hours after the pledge is made. It does, however, retain the requirement that the pawnbroker retain any purchased goods or articles for 15 days.[57]

Notice of forfeiture

If a pledgor fails to pay interest and fees to a pawnbroker on a pawn loan for three months from the date of the loan or the date on which the last interest payment is due, the bill requires a pawnbroker to send a forfeiture notice to the pledgor by United States postal mail. The notice must indicate that unless the pledgor redeems the pledged property or pays all interest and fees due within 30 days, the pledged property will be forfeited to the pawnbroker. Current law requires such notice to be sent if the pledgor fails to pay interest for only two months and only specifies that the notice must be sent by mail. Current law also does not require that the notice include that "fees" must be paid, and instead specifies that "storage charges" must be paid.[58]

Pawn loan redemption

The Pawnbroker Law includes provisions specifying when and how a pledgor can repay a pawn loan balance and redeem pledged property. The bill permits a licensee to accept from a pledgor a portion of the outstanding principal loan balance at any time and permits a pledgor to redeem a pawn loan any time after the pledge was made. This repeals the current law requirement that a pledgor can only redeem a pawn loan beginning 72 hours after the pledge. The bill also adds an exception for the current month to the current law prohibition that a pledgor may not prepay interest or storage charges except when the pledgor redeems the pledged property. The bill also adds a provision of law prohibiting prepayment of interest and storage charges at the time the loan is originated.[59]

Reclaiming stolen property

The bill changes the terminology relating to returning stolen property that has been purchased or pawned and is held by a pawnbroker. The bill clarifies that if the local chief of police or sheriff receives a report that property has been stolen and determines the identity of the person claiming to be the true owner and informs the

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[57] R.C. 4727.12(A).

[58] R.C. 4727.11.

[59] R.C. 4727.06(D).

licensed pawnbroker, the pawnbroker may restore the allegedly stolen property to the claimant directly. Current law refers to the person claiming to be the true owner and the claimant as the "true owner."[60]

Continuing education requirements

The bill reduces the continuing education requirements for pawnbrokers. Under the bill, for each two year period beginning June 30, 2017, each person licensed as a pawnbroker must have at least one person employed at each of the licensee's offices or places of business who has completed at least eight hours of continuing education. The continuing education must be completed by the end of each two year period and must be a course or program approved by the Superintendent of Financial Institutions after consultation with an industry representative selected by the Superintendent. Current law requires each licensed pawnbroker to complete 12 hours of continuing education every two year period.

The bill also repeals the current law requirements that (1) any licensed pawnbroker who has more than three employees must designate an individual to the Superintendent as a salesperson, (2) each location with three or more employees must have at least one salesperson, and (3) each salesperson must complete at least eight hours of continuing education in accordance with the Pawnbroker's Law.[61]

Penalties

The bill's provisions will become part of the Ohio Pawnbroker's Law. Under current law unchanged by the bill, a violation of the Pawnbroker's Law (with the exception of a person acting as a pawnbroker without a license) is guilty of a third degree misdemeanor, punishable by a fine of up to $500 and up to 60 days in jail. Each subsequent offense is a second degree misdemeanor, punishable by a fine of up to $750 and up to 90 days in jail.[62]

Major sports events grants

The bill states that money appropriated for grants to local governments to help them host major sporting events but not disbursed by the end of a fiscal year are automatically reappropriated for the same purpose for the ensuing year.[63] The bill,

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[60] R.C. 4727.12(C) and (D).

[61] R.C. 4727.19.

[62] R.C. 2929.24, 2929.28, and 4727.99, not in the bill.

[63] R.C. 122.121(H).

however, maintains the requirement under continuing law that the total of all such grants issued in any fiscal year not exceed $1 million.

Continuing law authorizes the Director of Development Services to make grants to counties or municipal corporations hosting specified sporting events. The grant amount is based on the increased state sales tax revenue directly attributable to the preparation for and presentation of the event, as determined by the Director. Grants are available only if the increased state sales tax revenue is estimated to be greater than $250,000. No individual grant may exceed $500,000, and the total of all grants in any fiscal year may not exceed $1 million. Grant money must be used to pay the grantee's costs in preparing for the sporting event.

Animal control

The bill applies the law that prohibits a person from allowing certain animals to run at large to all poultry. Under current law, with respect to poultry, the prohibition only applies to geese. The prohibition also applies under current law to horses, mules, cattle, bison, sheep, goats, swine, llamas, and alpacas.[64]

Use of municipal water and sewer funds

The bill reauthorizes municipal corporations in Stark County to use money in their water and sewer funds for water or sewer system extensions under certain circumstances and for two years. During fiscal years 2017 and 2018 only, the legislative authority of such a municipal corporation may use up to 5% of the aggregate amount of money deposited in the municipal corporation's sewer fund and up to 5% of the aggregate amount of money deposited in a fund created by the municipal corporation for water-works to fund the extension of the municipal corporation's water or sewerage system, as applicable, if both of the following apply:

(1) The water or sewerage system is being extended to areas for economic development purposes; and

(2) The areas into which the water or sewerage system is being extended are the subject of a cooperative economic development agreement entered into by the municipal corporation. (A cooperative economic development agreement is an agreement between at least one municipal corporation and one township providing for joint services, the provision of services by a municipal corporation in the unincorporated territory of a township, annexation or moratoria thereon, property tax exemptions and payments in lieu of taxes, and other development matters. R.C. 701.07.)

[64] R.C. 951.02 and 951.13.

With regard to either fund, the legislative authority cannot exceed the 5% limit established by the bill.

Under legislation enacted in 2012, municipal corporations in Stark County were permitted to use water and sewer funds in the same manner and under the same conditions as S.B. 235 provides but for fiscal years 2013 and 2014 only. (See Section 707.10 of H.B. 487 of the 129th General Assembly.)

Hospital board meetings held by means of communications equipment

The bill authorizes members of a board of county hospital trustees,[65] members of a board of hospital commissioners,[66] and members of a board of governors of a municipal hospital[67] to attend board meetings by means of communications equipment authorized by rule of the board, including by video conference or teleconference. Regardless of the requirement in the Open Meetings Act[68] that a member of a public body be present in person at a meeting open to the public in order to be part of a quorum and to vote, board members who attend a board meeting by means of authorized communications equipment must be (1) considered present in person at the meeting, (2) permitted to vote, and (3) counted for purposes of determining whether a quorum is present at the meeting.[69]

The bill requires the board of county hospital trustees, board of hospital commissioners, and board of governors to maintain a record of any vote or other action taken at a board meeting conducted by means of authorized communications equipment. The record also must identify the members attending the board meeting by such means.

The board of county hospital trustees, board of hospital commissioners, and board of governors must adopt rules designating the communications equipment that is authorized for use during board meetings. The board also must adopt rules that establish procedures and guidelines for using authorized communications equipment

[65] R.C. 339.02.

[66] R.C. 749.07.

[67] R.C. 749.18.

[68] R.C. 121.22(C), not in the bill.

[69] R.C. 339.02, 339.05(C), 749.07, and 749.18.

during board meetings and that ensure verification of the identity of any board members attending board meetings by means of such equipment.[70]

Severability clause

The bill states that if any of its provisions, or the application of those provisions to any person or circumstance, is held to be invalid, the invalidity does not affect other provisions or applications of the bill that can be given effect without the invalid provision or application, and to that end invalid provisions are severable.[71] This provision is substantially the same as an existing statute, R.C. 1.50, insofar as that statute applies to the Revised Code sections amended or enacted by the bill.

HISTORY

ACTION	DATE
Introduced	10-27-15
Reported, S. Ways & Means	04-27-16
Passed Senate (22-11)	05-04-16
Reported, H. Finance	---

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[70] R.C. 339.02, 749.07, and 749.18.

[71] Section 19.