



# OHIO LEGISLATIVE SERVICE COMMISSION

## Final Analysis

Mackenzie Damon

### Am. Sub. H.B. 9

131st General Assembly  
(As Passed by the General Assembly)

**Reps.** Boose, Blessing, Hambley, Hood, Scherer, Sprague, Strahorn, Young, Dever, Driehaus, Rogers, Anielski, Antonio, Ashford, Baker, Barnes, Brown, Buchy, Burkley, Butler, Celebrezze, Cera, Clyde, Conditt, Derickson, Dovilla, Duffey, Fedor, Green, Grossman, Hackett, Hagan, Henne, Hill, Huffman, T. Johnson, Koehler, Kraus, Lepore-Hagan, Maag, McClain, McColley, M. O'Brien, S. O'Brien, Patterson, Perales, Phillips, Ramos, Reineke, Retherford, Rezabek, Romanchuk, Ryan, Schuring, Sears, K. Smith, Stinziano, Sweeney, Sykes, Terhar, Thompson

**Sens.** Gardner, Peterson, Sawyer, Tavares, Uecker

**Effective date:** March 21, 2017

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## ACT SUMMARY

- Creates a permanent joint legislative committee of six legislators and the Tax Commissioner (or designee) to periodically review all existing "tax expenditures."
- Requires the committee to make recommendations to the General Assembly as to the continuation, modification, or repeal of existing tax expenditures.
- Requires any bill proposing a new or modified tax expenditure to include a statement of the objectives and intent of the tax expenditure.

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## CONTENT AND OPERATION

### Tax Expenditure Review Committee

The act creates a permanent committee – composed of six legislators and the Tax Commissioner or the Commissioner's designee – to review all existing "tax expenditures." The review of existing tax expenditures must be scheduled so that each

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\* This version updates the effective date.

existing tax expenditure is reviewed at least once every eight years. The committee is named the Tax Expenditure Review Committee.

### **"Tax expenditure"**

The act limits pre-existing law's definition of "tax expenditure," which is used to define the content of the Department of Taxation's Tax Expenditure Report that accompanies the Governor's proposed biennial operating budget.

As previously defined, a tax expenditure included "any tax provision in the Revised Code that exempts, either in whole or in part, certain persons, income, goods, services, or property from the effect of taxes established in the Revised Code, including, but not limited to, tax deductions, exemptions, deferrals, exclusions, allowances, credits, reimbursements, and preferential tax rates."

Under the act, such a provision qualifies as a tax expenditure only if all of the following apply: (1) it could reduce revenue to the state's General Revenue Fund, (2) it may be legislatively changed or repealed, (3) the attribute exempted from tax would otherwise be included as part of that tax's defined base, and (4) it is not subject to an alternate tax.<sup>1</sup> These new limitations were already employed by the Tax Commissioner in deciding which tax expenditures to include in the Tax Expenditure Report.

According to the most recently issued Tax Expenditure Report, there are currently 128 tax expenditures satisfying this definition.

### **Duty of committee**

The Tax Expenditure Review Committee must establish a schedule for reviewing each existing tax expenditure at least once every eight years. The Committee may order tax expenditures for review according to the order of their enactment or modification or according to the beneficiaries, the objectives, or the policy rationale. The Committee must recommend whether each tax expenditure under review should be continued, modified, repealed, or scheduled for further review later. The Committee may recommend "accountability standards" for future reviews of a tax expenditure.<sup>2</sup>

### **Review criteria**

The act sets forth the following factors the Committee may consider in reviewing existing tax expenditures:

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<sup>1</sup> R.C. 5703.48.

<sup>2</sup> R.C. 5703.95(D).



--The number and classes of persons that benefit from the tax expenditure;

--State and local fiscal effects;

--Public policy objectives, for which the Committee may consider legislative history, the sponsor's intent, and the tax expenditure's effects on economic development, "high-wage jobs," and "community stabilization";

--The success of the tax expenditure in meeting its objectives;

--Whether the objectives could be served by other means or with less fiscal cost;

--Whether the objectives could have been accomplished by appropriations instead of tax expenditures;

--Whether the tax expenditure is more expansive than intended or has any other unintended effects, including giving an unfair competitive advantage to recipients at the expense of other businesses;

--The extent of any negative effects on recipients from ending a tax expenditure;

--The feasibility of modifying a tax expenditure to include adjustments or recapture in case recipients do not comply with its terms.<sup>3</sup>

### **Proposed tax expenditures**

The Committee is not charged with reviewing tax expenditures proposed in pending legislation. However, the act requires any bill introduced in the General Assembly that proposes to enact or modify a tax expenditure to include a statement explaining its objectives and the sponsor's intent.<sup>4</sup>

### **Report**

The Committee must issue a report by July 1 of every even-numbered year of its determinations, deliver a copy of the report to the Governor, the Speaker of the House, the Senate President, and the minority leaders of each chamber, and arrange for the

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<sup>3</sup> R.C. 5703.95(E).

<sup>4</sup> R.C. 5703.95(G).



report to be made available online.<sup>5</sup> The report must be included as an appendix to the Governor's proposed biennial operating budget.<sup>6</sup>

### **Committee composition**

The Committee is composed of six voting members: three Representatives and three Senators appointed by the Speaker and Senate President, respectively, in consultation with their minority leader counterparts. No more than two Representatives or Senators may be members of the same political party. All Representatives and Senators "should," according to the act, be members of their respective chamber's committee that deals primarily with tax legislation. Initial appointments must be made by April 20, 2017. Terms on the Committee coincide with the term of each General Assembly.

The seventh, nonvoting member of the Committee is the Tax Commissioner or the Commissioner's designee.<sup>7</sup>

The Committee's chairperson, elected from among the legislative members, serves a two-year term, but two consecutive chairpersons may not be members of the same chamber.

### **Meetings**

The Committee must meet at least once during the first year of each fiscal biennium. Its meetings are open to the public to the extent required under the existing Open Meetings Law (R.C. 121.22), and the Committee must allow any person to present testimony or evidence related to a tax expenditure. It must hold its first meeting by June 19, 2017. For each tax expenditure currently under review, the Committee must hold at least one meeting during which members of the public may present evidence or testimony related to that expenditure. The chairperson may call a special meeting to accept evidence or testimony on a particular tax expenditure at the request of a member of the public.

### **Staff assistance**

The act requires staff of the Legislative Service Commission to assist the Committee as directed by the Committee. Additionally, state agencies must provide the Committee with any information it requires to perform its duties.<sup>8</sup>

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<sup>5</sup> R.C. 5703.95(F).

<sup>6</sup> R.C. 107.03.

<sup>7</sup> R.C. 5703.95(B).



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## HISTORY

ACTION	DATE
Introduced	01-28-15
Reported, H. Ways & Means	05-27-15
Passed House (98-0)	06-24-15
Reported, S. Ways & Means	05-25-16
Passed Senate (33-0)	05-25-16
House refused to concur in Senate amendments (1-95)	11-29-16
Senate requested conference committee	12-07-16
House acceded to request for conference committee	12-07-16
Senate agreed to conference committee report (31-0)	12-08-16
House agreed to conference committee report (94-0)	12-08-16

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<sup>8</sup> R.C. 5703.95(C).

