



# OHIO LEGISLATIVE SERVICE COMMISSION

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## Bill Analysis

Mackenzie Damon

### **S.B. 209**

132nd General Assembly  
(As Introduced)

**Sens.** Coley, Eklund

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## **BILL SUMMARY**

- Modifies the statutory rules for determining which property tax exemption has priority when a parcel subject to a tax increment financing (TIF) arrangement also qualifies for another exemption.

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## **CONTENT AND OPERATION**

### **Priority of TIF property tax exemptions**

The bill modifies the statutory rules for determining the relative priority of property tax exemptions when a parcel that is or may become subject to a tax increment financing (TIF) arrangement also qualifies for another exemption.

### **Summary of TIFs**

TIF is a mechanism available to municipalities, townships, and counties to finance public infrastructure improvements and, in certain circumstances, residential rehabilitation. Through a TIF, a political subdivision grants a property tax exemption for the increase in the assessed value of designated property after the creation of the TIF; the property's "base" value at the time the TIF takes effect continues to be taxable by the school district, county, and other local taxing authorities. Property owners make payments in lieu of taxes (PILOTs) to the political subdivision that created the TIF equal to the amount of taxes that would otherwise have been paid with respect to that increased property value. TIFs thereby create a flow of revenue back to the political

subdivision to finance infrastructure or residential rehabilitation projects, typically through the issuance of debt backed by the PILOT revenue.<sup>1</sup>

### **Relative priority of TIF and non-TIF exemptions**

Under current law, if both a TIF exemption and another property tax exemption could apply to a parcel, two factors influence which exemption has priority. The first factor is timing – i.e., which exemption applied to the property first. The second factor is whether the property owner consented to the creation of the TIF. Unlike most other property tax exemptions, with a TIF the political subdivision may apply to the state for the exemption with or without the property owner's prior consent; with most other property tax exemptions only the owner or a long-term lessee may apply. In practical terms, this enables a political subdivision to impose a TIF over an area that includes many parcels without each parcel owner having to file an individual exemption application or even be consulted individually about the TIF.<sup>2</sup>

When a property owner consents to the creation of a TIF and, correspondingly, to making the accompanying PILOTs, the incremental portion of the parcel's value that is exempted may not be exempted under any other law unless the political subdivision that authorized the TIF formally agrees to the other tax exemption. (Nevertheless, the base value that is not exempted by the TIF may qualify for the other exemption.) This policy ensures that PILOTs, once obligated, will continue to be available for infrastructure financing and bond retirement.<sup>3</sup>

However, if a property owner has not consented to a TIF, current law states that the TIF exemption is "subordinate" to any other exemption, and that the owner does not have to pay PILOTs, without indicating whether this result depends on whether the TIF precedes or occurs after the other exemption. If the TIF is imposed after the property was exempted under another law, the TIF's subordinate status suggests that no TIF exemption or PILOTs may apply to any part of the property's value for as long as the other exemption applies. If the TIF precedes the other exemption, the TIF's subordinate status suggests that the other exemption displaces the TIF and that any obligation to pay PILOTs would end, implying that the PILOTs from the property would no longer be available to service TIF debt or otherwise finance the TIF infrastructure.

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<sup>1</sup> R.C. 5709.40, 5709.73, and 5709.78.

<sup>2</sup> Instead, the subdivision is required to hold a public hearing on the TIF and notify, by mail, each affected property owner of the hearing. R.C. 5709.40(C), 5709.73(C), and 5709.78(B).

<sup>3</sup> R.C. 5709.911(B) of current law.

The bill removes a property owner's consent to a TIF as a factor determining the relative priority of a TIF exemption and another exemption. Priority would depend only on which exemption first applies to the property. Accordingly, once a TIF exemption is approved for a parcel, no later tax exemption may apply to the portion of the parcel's incremental value that is exempted by the TIF until the TIF expires, regardless of whether the parcel owner consented to the TIF (TIFs may last for as long as 30 years).<sup>4</sup> Further, if a TIF exemption application is pending before the Department of Taxation, no other exemption may begin to be applied to the incremental TIF value until the Department's decision on the TIF exemption is made.<sup>5</sup>

Conversely, if a tax exemption already applies to a parcel when a TIF is created, the bill specifies that the TIF exemption is always subordinate to that preexisting exemption, regardless of who applies for the TIF exemption or whether the owner consents to the TIF. No PILOTs are required with respect to that property as long as the property continues to qualify for the preexisting exemption.<sup>6</sup>

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## HISTORY

ACTION	DATE
Introduced	10-03-17

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<sup>4</sup> R.C. 5709.911(A)(2) in the bill.

<sup>5</sup> R.C. 5709.911(B) in the bill.

<sup>6</sup> R.C. 5709.911(A)(2) in the bill.

