UPDATED VERSION*

OHIO LEGISLATIVE SERVICE COMMISSION

Final Analysis

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other LSC staff

Am. Sub. S.B. 8

132nd General Assembly
(As Passed by the General Assembly)

Sens. Gardner and Terhar, Beagle, Eklund, Hite, Brown, Manning, Oelslager, Uecker, Bacon, Balderson, Dolan, Hackett, Hoagland, Hottinger, Huffman, Kunze, LaRose, Lehner, Obhof, O'Brien, Peterson, Schiavoni, Sykes, Tavares, Thomas, Wilson, Yuko

Reps. Gavarone, Hambley, Anielski, Antonio, Arndt, Ashford, Barnes, Blessing, Brenner, Brown, Butler, DeVitis, Fedor, Galonski, Hughes, Ingram, Landis, Manning, O'Brien, Patterson, Patton, Pelanda, Perales, Riedel, Rogers, Seitz, Sheehy, Sweeney, West

Effective date: March 23, 2018; appropriations effective December 22, 2017

ACT SUMMARY

Education

1:1 School Facilities Option Program

- Establishes the 1:1 School Facilities Option Program as an alternative to assist certain school districts in constructing, acquiring, or making additions or repairs to a classroom facility.

Community school sponsor ratings

- Declares that a community school sponsor's overall rating for the 2015-2016 school year must be considered "ineffective," instead of "poor," if it received a score of "3" or a "B" or higher on the academic performance component for that year and appealed its overall rating for that year, and prohibits further action on the appeal.

College credit for comparable coursework

- Eliminates recently enacted requirements that state institutions of higher education accept or award course credit earned elsewhere in Ohio as a substitute for comparable coursework offered at the institution.

* This version updates the effective date.

Applied bachelor's programs at two-year institutions

- Eliminates the alternative pathway for approval by the Chancellor of Higher Education of an applied bachelor's degree program offered by a two-year state institution of higher education.

SERS cost-of-living adjustment

- Requires the School Employees Retirement Board to determine how long retirees and benefit recipients whose allowances or benefits begin on or after January 1, 2018, must wait before first receiving annual cost-of-living adjustments (instead of waiting 12 months).

Taxation

School district TPP tax reimbursements

- Increases the payments that certain school districts will receive as reimbursement for their loss of tangible personal property (TPP) tax revenue in FY 2018 and FY 2019.

Regional Transportation Improvement Projects (RTIPs)

- Authorizes the governing board of an existing regional transportation improvement project (RTIP) – instead of the boards of county commissioners – to create a transportation financing district (TFD) in which improvements are exempted from property tax in exchange for service payments.

- Modifies how TFD service payments are calculated and distributed.

- Narrows the class of residential property that may be included in a TFD.

- Modifies and clarifies how surplus TFD and other RTIP revenues are distributed after an RTIP dissolves.

Tourism development districts

- Changes the sources of existing revenue a county may use to fund the tourism development and capital projects in a tourism development district, which currently may only be designated in Stark County.

Sales and use tax exemption for corrective eyewear

- Exempts corrective eyeglasses and contact lenses from sales and use tax beginning July 1, 2019.

Rural growth investment credit

- Authorizes a nonrefundable tax credit for insurance companies that make loans to or investments in special purpose "rural business growth funds" that invest in small businesses having substantial operations in counties with a population less than 200,000.

- Limits the total amount of the credits to $45 million.

- Prescribes a penalty for funds whose investments fail to produce certain job creation and retention benchmarks.

Business income deduction for PEO-paid compensation

- Specifies that a pass-through entity (PTE) investor who is paid wages or guaranteed payments by a professional employer organization hired by the PTE may claim the business income deduction and apply the 3% flat tax rate with respect to the income, provided the investor holds at least a 20% interest in the PTE.

Veterans organizations grant program

- Transfers the duty to process state subsidy payments to veterans organizations from the Director of Budget and Management to the Director of Veterans Services.

Transportation between county jails and courts

- Allows municipal courts and county courts to contract with county sheriffs for the transportation of persons from the county jail to the municipal court or county court.

Deputy sheriffs as bailiffs

- Requires every deputy sheriff of a county to serve ex officio as a deputy bailiff of a municipal court or county court within the county.

- Requires every deputy sheriff of a county to serve ex officio as a bailiff of a county court within the county in which a bailiff has been appointed, but prohibits the deputy sheriff from performing court services similar to those performed by the sheriff for the court of common pleas unless the services are requested by the court.

Appropriations and earmarks

- Makes appropriations and revises earmarks for several departments.

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CONTENT AND OPERATION

1:1 School Facilities Option Program

The act establishes the 1:1 School Facilities Option Program. Under the program, the Ohio Facilities Construction Commission must provide funding to assist eligible school districts in constructing, acquiring, reconstructing, or making additions or repairs to any feature of a classroom facility in lieu of a larger project under the

Classroom Facilities Assistance Program (CFAP) or Vocational School Facilities Assistance Program (VFAP).

A district may avail itself of the new program only if it has not entered into an agreement for any previous state-assisted classroom facilities project, except the Emergency Assistance Program. Furthermore, a city, exempted village, or local school district that received partial assistance under CFAP prior to May 20, 1997, is not eligible for the new program.[1]

Under this new program, a district may receive up to the greater of $1 million or 10% of the state's portion of the project cost of the district's total facilities needs if it were to participate in CFAP or VFAP. However, a district may choose to receive less than the maximum. The district must match the state funds it receives on a one-to-one basis.

Note, the program under the act is identical to the program enacted in H.B. 49 of the 132nd General Assembly, effective September 29, 2017. H.B. 49 is the main operating budget act for the FY 2018-FY 2019 biennium. For a more detailed description of the 1:1 Program as enacted by this act and H.B. 49, see pp. 296-297 of the H.B. 49 Final Analysis at https://www.legislature.ohio.gov/download?key=7593&format=pdf.

Community school sponsor ratings

The act stipulates that a community school sponsor is considered to have an overall rating of "ineffective" for the 2015-2016 school year, for purposes of determining sponsorship incentives, its ability to continue sponsoring community schools, and revocation of sponsorship authority, if the sponsor both:

(1) Received a score of "3" or higher or a grade of "B" or higher on the academic performance component of the sponsor rating for the 2015-2016 school year; and

(2) Appealed its overall rating for that year in the manner specified by continuing law.

This provision appears to apply only to the Newark City School District, which sponsors Newark Digital Academy and Par Excellence Academy. The district had received an overall sponsor rating of "poor" for 2015-2016, which would have resulted in revocation of all sponsorship authority pending appeal. Assigning a sponsor rating of "ineffective" for that school year instead allows the district to continue sponsoring

[1] R.C. 3318.39.

those two schools. However, it is prohibited from sponsoring any new or additional community schools. (See "**Background**," below.)

The act also prohibits the State Board of Education from taking further action on that sponsor's appeal. It specifically excludes application of this provision to any sponsor ratings received after the 2015-2016 school year.[2]

Background

Under continuing law, the Department annually assigns an overall rating to the sponsors of community schools based on a combination of three components: (1) the academic performance of students enrolled in the community schools it sponsors, (2) the sponsor's adherence to quality practices, and (3) the sponsor's compliance with laws and administrative rules. Each component receives an individual rating, and the overall rating is derived from those individual ratings. The ratings are "exemplary," "effective," "ineffective," and "poor."

A sponsor that has its sponsorship authority revoked, because it receives either an overall rating of "ineffective" for three consecutive years or an overall rating of "poor" for one year, may appeal the revocation to the Superintendent of Public Instruction. The state Superintendent must appoint an independent hearing officer to conduct a hearing. After the hearing's completion, the State Board of Education must determine whether revocation is appropriate, and if so, confirm the revocation.[3]

College credit for comparable coursework

The act repeals provisions, enacted by H.B. 49, that (1) prohibited state institutions of higher education from refusing to accept college credit earned in Ohio within the past five years as a substitute for comparable coursework offered at the institution and (2) required them to offer for course credit a competency-based assessment, in lieu of course completion, to a student who earned college credit in Ohio more than five years ago.[4]

Applied bachelor's programs at two-year institutions

The act eliminates a provision enacted in H.B. 49 that permitted the Chancellor of Higher Education to approve an applied bachelor's degree program offered by a two-year state institution of higher education that does not demonstrate the conditions for

[2] Section 3.

[3] R.C. 3314.016, not in the act.

[4] R.C. 3345.58, repealed.

approval, if it demonstrates a unique approach to benefit the state's system of higher education.[5] The act does not affect the Chancellor's ability to approve a two-year state institution's applied bachelor's degree program that demonstrates all of the following:

(1) Evidence of an agreement between the college and a regional business or industry to train students in an in-demand field and to employ them upon successful completion of the program;

(2) The workforce needs of the regional business or industry are in an in-demand field with long-term sustainability, based on data provided by the Governor's Office of Workforce Transformation;

(3) Supporting data that identifies the specific workforce need the program will address;

(4) The absence of a bachelor's degree program that meets the workforce needs addressed by the proposed program offered by a state university or private nonprofit college; and

(5) Willingness of an industry partner to offer workplace-based learning and employment opportunities to students enrolled in the proposed program.

SERS cost-of-living adjustment

Currently, School Employees Retirement System (SERS) retirement allowance, disability benefit, and survivor benefit recipients are first eligible for annual cost-of-living adjustments (COLAs) after receiving an allowance or benefit for 12 months. Until December 31, 2017, the annual COLA was a mandatory 3%. Beginning with 2018, an annual COLA is permissive and, if the SERS Board grants one, the amount is the percentage increase in the Consumer Price Index, but not exceeding 2.5%. The SERS Board has announced that it is suspending the COLA for 2018, 2019, and 2020.[6]

For recipients whose allowances or benefits begin on or after January 1, 2018, the act requires the SERS Board to determine the number of anniversaries that must occur before recipients are first eligible for a COLA. So instead of 12 months, these recipients could wait 24 or 36 months or longer for a first COLA.

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[5] R.C. 3333.051.

[6] School Employees Retirement System, *Board Implements Three-Year COLA Suspension*, October 11, 2017, http://ohsers.org/.

Because the act takes effect after January 1, 2018, it appears that a recipient whose allowance or benefit begins on or after that date but before the act's March 23, 2018, effective date is eligible for the first COLA after receiving the allowance or benefit for 12 months. However, these recipients will not receive a COLA after 12 months unless the SERS Board removes the COLA suspension for 2018 through 2020.[7]

School district TPP tax reimbursements

The act increases the payments that certain school districts will receive as reimbursement for their loss of tangible personal property (TPP) tax revenue in fiscal years 2018 and 2019.[8]

Continuing law provides the payments to school districts as compensation for the revenue lost due to (1) legislated reductions in the taxable value of utility company TPP and (2) the repeal of taxes on TPP used in business. The act affects payments that are based on tax losses from local operating levies that are imposed at a fixed millage rate (i.e., not emergency levies or bond levies).

Under existing law, reimbursement payments for such levies are scheduled to phase-down each year according to a fixed percentage of each district's taxable property valuation. Specifically, payments will decline in FY 2018 by 1/16 of 1% of a district's taxable property valuation averaged over the three-year period from 2014 to 2016 (1/16 of 1% is the equivalent of 5/8 mills per dollar of valuation, or 0.0625%). In each year thereafter, a district's payment will equal the preceding year's payment minus 0.0625% of the three-year average valuation, until the payment amount reaches zero.[9]

The act modifies the payments to be made to certain school districts in FY 2018 and FY 2019, as follows:

(1) In FY 2018 for traditional school districts, and in FY 2018 and FY 2019 for joint vocational school districts, if (a) the amount the district will receive under continuing law is less than (b) its FY 2017 reimbursement (including any supplemental payment authorized in S.B. 208 of the 131st G.A.),[10] minus 3.5% of the district's total resources,[11]

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[7] R.C. 3309.374.

[8] Section 4.

[9] R.C. 5709.92.

[10] Under continuing law, the amount a district receives in FY 2018 is based on its FY 2017 reimbursement, *excluding* any S.B. 208 supplement. R.C. 5709.92(C)(2).

[11] In general, a district's "total resources" equals its combined tax revenue, state aid, and TPP reimbursements for a fiscal year. See Section 4(A)(1) and (2).

the district will receive a supplemental payment equal to the difference between those two amounts.

(2) In FY 2019 for traditional school districts, if the district received such a supplemental payment in FY 2018, continuing law's ⅝ mill phase-down will be subtracted from the total reimbursement payment it received in FY 2018, including the act's supplemental payment for that year.

In FY 2020 and thereafter, continuing law's phase-down will continue as if no supplements were paid in FY 2018 and FY 2019. So, a district's payment will be based on the amount it received in the preceding fiscal year, excluding any supplement, minus ⅝ mills of its average property valuation.

Regional Transportation Improvement Projects (RTIPs)

Continuing law authorizes the boards of county commissioners of two or more counties to enter into a cooperative agreement creating a regional transportation improvement project (RTIP). The purpose of an RTIP is to undertake transportation improvements within the participating counties. The agreement governs the scope of the project and includes a comprehensive plan for its completion. It is administered by a governing board consisting of one county commissioner and the county engineer from each participating county. The act makes several changes to the manner in which RTIPs may be funded and wound up when the project is completed.

Transportation financing districts (TFDs)

H.B. 49 authorized counties participating in an RTIP to create a transportation financing district (TFD) that, similar to a tax increment financing (TIF) incentive district, generates funding for projects by exempting the increase in assessed value of nonresidential parcels from property taxation and collecting service payments from the property owners. (The increase in assessed value is called an "improvement" in this context.) The service payments may be used in furtherance of the RTIP and in accordance with the cooperative agreement.

TFD creation

The act instead authorizes the RTIP governing board, rather than the boards of county commissioners, to create and administer the TFD.[12] It also limits the authority to create a TFD to governing boards of RTIPs created before the act's March 23, 2018, effective date.[13] (Currently, the only RTIP in the state is a cooperative agreement

[12] R.C. 5709.48, 5709.49, and 5709.50.

[13] R.C. 5595.04 and 5709.48(B).

between Stark, Carroll, and Columbiana counties.) In addition to creating the TFD, the act requires the governing board to perform the associated administrative functions and manage the expenditure of the service payments remitted by owners of parcels in the TFD.[14]

The tax exemptions commence in the year in which the exempted improvements first appear on the tax list following the TFD's creation, unless another year is specified in the resolution creating the TFD. Prior law alternatively allowed the exemption to commence in the year in which the value of an improvement to a parcel exceeded a specified amount or in which the construction of an improvement was completed, but the act removes this option.[15]

Reimbursement of forgone property tax revenue

Prior law required each local taxing unit with territory in a proposed TFD to approve the TFD before its creation. The act waives that requirement for a taxing unit that is fully compensated under the terms of the exemption for all property tax revenue forgone because of the exemption of improvements in the TFD.[16]

Prior law also required taxing units to be reimbursed for tax revenue forgone from certain special-purpose levies as the result of a TFD. These are taxes levied for certain particular purposes, most significantly but not exclusively county taxes. The act removes the requirement to provide the reimbursements.[17] (Similar special-purpose levy reimbursements currently are required upon creation of a TIF incentive district.)

Residential property

Prior law prohibited parcels used exclusively for residential purposes from being included in a TFD. The act expands that exclusion to encompass any parcel used primarily for residential purposes.[18]

RTIP dissolution

Continuing law prescribes the manner in which a governing board may dissolve an RTIP. The act requires, upon the dissolution of the RTIP, that incidental surpluses in

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[14] R.C. 5709.50(A).

[15] R.C. 5709.48(G)(2).

[16] R.C. 5709.48(E)(3).

[17] R.C. 5709.48(H) and 5709.48(B) and (C).

[18] R.C. 5709.48(C).

revenue generated by a TFD be distributed proportionally among the taxing units in which improvements were exempted based on the amount of revenue contributed by property owners in each unit. A taxing unit receiving this revenue must apportion and use the revenue as it would current property taxes.[19] Prior law distributed any TFD surplus to the general fund of the county granting the exemption.

The act also clarifies that the apportionment and payment of TFD funds upon the dissolution of an RTIP is handled separately from other unencumbered RTIP revenue. Under the act, other unencumbered RTIP revenue is distributed in the manner provided in the cooperative agreement or, if the agreement does not specify how the funds are to be divided, in a manner deemed equitable by the county treasurer of the most populous participating county based on the amount of revenue contributed by subdivisions within participating counties.[20]

Tourism development district funding

Under continuing law, a township or municipal corporation located in a county with a population between 375,000 and 400,000 that levied a county sales tax rate of 0.50% or less in September 2015 (Stark County) may designate a special district within which the municipal corporation or township may levy certain taxes or fees or receive certain revenue to fund tourism promotion and development in that district. The district is referred to as a "tourism development district" or a TDD. Continuing law also authorizes or requires Stark County to divert certain county sales tax, lodging tax, and other existing revenue streams to fund tourism development or capital projects in a TDD.

The act makes several changes to the manner in which the county may divert these revenues.

County lodging taxes

Background

Counties may impose taxes on sales of lodging for transient guests. All counties, including Stark County, are authorized to levy up to 3% general lodging tax, most of which is generally remitted to the county's convention and visitors' bureau (CVB) to promote tourism and marketing and fund related activities of the CVB. Stark County is specially authorized to impose an additional 3% lodging tax, all of which must be paid to its CVB for the same purposes as the general lodging tax. However, Stark County

[19] R.C. 5709.50(B).

[20] R.C. 5595.13.

currently may use up to $500,000 annually of its general or special lodging tax otherwise required to be paid to the CVB to service debt issued to fund capital projects in a TDD. The act makes several changes to the manner in which these taxes may be used to fund activities or projects in a TDD.

TDD tourism promotion

Continuing law requires all Stark County lodging taxes collected from hotels located in a TDD to be remitted to the county's CVB to develop tourism in the TDD if the CVB and county agree on how to spend that revenue for that purpose. The act authorizes Stark County to divert any other portion of lodging tax revenue that would otherwise be paid to a CVB to promote county tourism to instead develop tourism in a TDD, provided the county similarly reaches an agreement with the CVB on how that revenue should be used for that purpose. The county may pay any such diverted lodging tax revenue to the CVB to use in the agreed-upon manner.[21]

TDD credit enhancement facilities

The act specifically permits Stark County to use revenue from its 3% special lodging tax to further secure the payment of debt issued to finance capital projects in a TDD through the provision of "credit enhancement facilities," e.g., letters of credit, insurance, or surety arrangements.[22]

Prior law authorized the county to provide credit enhancement facilities for such TDD capital projects, but did not specifically identify funding sources it could draw from to provide them. The act specifically authorizes the county to use special lodging tax revenues to provide TDD credit enhancement facilities.

TDD capital improvements

Continuing law authorizes a county to enter into a "cooperative agreement" with one or more of several other local governments or private parties to provide funding and issue debt for the development of capital projects in a TDD. The act expressly states that a county may use lodging tax revenue to fund those projects or to service debt issued for those projects only if that use is consistent with a cooperative agreement.[23] Prior law stated that lodging tax revenue could be spent for those purposes regardless of whether a cooperative agreement was even entered into.

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[21] R.C. 5739.09(N).

[22] R.C. 307.678(B)(2)(b) and (E)(1)(a) and 5739.09(A)(11).

[23] R.C. 307.678(D).

County sales tax

The act prohibits diversion for a TDD of revenues from a county sales tax levied to fund criminal and administrative justice services. Specifically, continuing law requires a county or transit authority in which a TDD is located to pay certain sales tax receipts to a municipality or township to develop tourism in a TDD created by the municipality or township if either requests the payments. The amount that may be diverted in this manner equals the increase in sales taxes remitted by vendors located in the TDD from the year before the TDD is designated (referred to in law as "incremental sales tax growth"). Under prior law, the incremental growth from any sales tax, regardless of the purpose for which it was originally levied, could be diverted. But the act prohibits diversion of incremental sales tax growth from a tax levied by a county to fund criminal and administrative justice services.[24]

The act also specifically authorizes a resolution adopted by a county to prescribe a date or period after which the county will cease making the incremental sales tax growth payments. Under continuing law, once a municipal corporation or township requests the diversion of incremental sales tax growth, the county or transit authority must adopt a resolution authorizing those payments. Prior law did not authorize the resolution to prescribe a date on which incremental sales tax growth payments would cease.[25]

County property tax

The act prohibits a county from using or pledging property taxes to fund TDD capital improvements. Prior law explicitly authorized a county to use or pledge property taxes to fund capital improvements in a TDD pursuant to a cooperative agreement if the tax revenue could otherwise lawfully be used for that purpose.[26]

Sales and use tax exemption for corrective eyewear

The act extends an existing sales and use tax exemption for prosthetic devices to include corrective eyeglasses and contact lenses, beginning July 1, 2019. Under prior law, the exemption covered devices worn to artificially replace a missing portion of the body, prevent or correct a physical deformity, or support a weak or deformed portion of the body, but explicitly excluded eyeglasses and contact lenses.[27]

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[24] R.C. 5739.213(A)(2)(a).

[25] R.C. 5739.213(B)(2).

[26] R.C. 307.678(A)(25).

[27] R.C. 5739.01(JJJ).

Rural growth investment credit

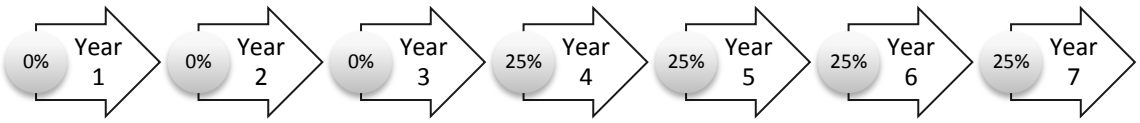
The act authorizes a new tax credit for insurance companies that make loans to or investments in special purpose "rural business growth funds," which are investment funds that satisfy eligibility criteria prescribed by the act and that are certified by the Development Services Agency (DSA) to provide capital for "rural business concerns" in exchange for the credit.

Credit details

The credit may be claimed against the state's taxes on foreign and domestic insurance companies. The amount of the credit equals 100% of the insurance company's credit-eligible capital contribution to a rural business growth fund. A "credit-eligible capital contribution" is an investment of cash that either (1) purchases an equity interest in the fund or (2) provides a loan with a maturity of at least five years, level principal repayment, and repayment terms that are independent of the fund's profitability. DSA may certify no more than $45 million in credit-eligible contributions over the lifetime of the rural growth investment credit. By definition, the sum of the credit-eligible contributions collected by the rural business growth fund must comprise exactly 60% of the fund's "eligible investment authority" – which is the amount of capital it agrees to invest in or lend to rural business concerns. Accordingly, DSA may approve no more than $60 million in eligible investment authority.

A participating insurance company must claim the credit in four annual installments, each equal to 25% of its credit-eligible capital contribution. The first installment is not available until the expiration of a three-year holding period, which begins tolling after the credit-eligible contribution is approved by DSA and after all amounts comprising the fund's eligible investment authority have been collected (defined by the act as the "closing date"). After the holding period, the act requires DSA to issue tax credit certificates to the insurance company on the fourth, fifth, sixth, and seventh anniversaries of the closing date. The credit is nonrefundable but, if it is not fully claimed in one year, the excess may be carried forward for up to four years.[28]

Credit Allocation Schedule



[28] R.C. 122.15(B), (C), and (D) and 122.152.

Rural business growth funds

Investment funds that have developed a business plan to invest in rural business concerns and that have solicited private investors to contribute capital to the plan may be certified as a rural business growth fund through an application process administered by DSA.

Eligibility

The act prescribes certain minimum eligibility thresholds and requirements that limit the types of funds that qualify for certification. One such threshold is engagement in analogous federal programs: each applicant (or an affiliate of the applicant) must be certified as a Rural Business Investment Company or licensed as a Small Business Investment Company under federal law. Another eligibility threshold is that the applicant must possess a substantial portfolio of previous investments in businesses that are similar to rural business concerns—i.e., its investment portfolio must have included at least $100 million of previous investments in total and included at least $50 million in rural businesses. The applicant may include the investments of affiliates for the purpose of meeting this requirement. The businesses in which the investments were made need not be located in Ohio but must otherwise have the same characteristics as rural business concerns.[29]

Application

An application for certification may be submitted at any time after the act's March 23, 2018, effective date. It must include documents and other evidence sufficient to prove that the applicant meets the eligibility thresholds. In addition, it must state the total eligible investment authority sought by the applicant, the industries the applicant will invest in, and an estimate of the number of full-time equivalent employees who will be hired or retained as a result of the applicant's investments. The applicant must obtain and include a revenue impact assessment of the applicant's business plan over a ten-year period prepared by a nationally recognized third-party independent economic forecasting firm using a dynamic forecasting model. Lastly, the applicant must pay a $5,000 nonrefundable fee and furnish signed affidavits from each investor that has agreed to make a credit-eligible contribution toward the applicant's business plan.[30]

Certification

The act requires DSA to certify qualifying rural business growth funds – and thereby award eligible investment authority – in the same order in which applications

[29] R.C. 122.151(A)(2).

[30] R.C. 122.151(A).

are received. Applications received on the same day are treated as having been received simultaneously.

DSA may deny an application only for the following reasons: the application is incomplete; the application fee is not paid; the applicant does not meet the eligibility thresholds; the estimated economic impact of the applicant's business plan does not exceed the cumulative amount of credits that would be awarded; the applicant has not solicited the correct amount of credit-eligible contributions (i.e., 60% of the applicant's eligible investment authority); or the maximum allotment of eligible investment authority has already been certified to other applicants.[31]

If DSA denies an application for any reason other than the maximum allotment having been reached, it must give the applicant 15 days to provide additional information to correct or complete the application. If the applicant timely submits the information, the application retains its original place in the order of applications to be reviewed by DSA. If approving one or more simultaneously submitted applications would cause the maximum allotment of credit-eligible contributions to be exceeded, DSA must proportionally reduce the eligible investment authority for each application.[32]

If an application is approved, DSA must certify the applicant as a rural business growth fund and specify the amount of the applicant's eligible investment authority. Within 60 days, the newly certified rural business growth fund must collect the appropriate amount of credit-eligible capital contributions and the investments of cash that will make up the remainder of the fund's eligible investment authority. At least 10% of the fund's eligible investment authority must be contributed by affiliates of the fund.[33]

After collecting all of its credit-eligible contributions and other cash investments, and within 65 days of being certified, the fund must send DSA documentation sufficient to prove that the collection process is complete. The documentation must also identify each investor that made a credit-eligible contribution. If the fund fails to timely comply with any of these requirements, its certification is revoked and its allotment of eligible investment authority becomes available for other applicants.[34]

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[31] R.C. 122.151(C) and (F).

[32] R.C. 122.151(D) and (E).

[33] R.C. 122.151(G).

[34] R.C. 122.151(H).

Growth investments in rural business concerns

Rural growth investment credits awarded to the investors of a rural business growth fund are subject to recapture (as described below) unless the fund makes and maintains a series of growth investments in rural business concerns. A "growth investment" is a capital or equity investment in, or loan to, a rural business concern that has a stated maturity of at least one year. A secured loan or a revolving line of credit qualifies as a "growth investment" only if the president or CEO of the rural business concern submits an affidavit attesting that the rural business concern sought and was denied similar financing from a commercial bank.

A "rural business concern" is a business that has its principal operations in a rural area of Ohio (i.e., a county having a population less than 200,000), has fewer than 250 employees, and had not more than $15 million in net income (i.e., federal gross income minus federal and state taxes) for the preceding taxable year. A business has its "principal operations" in Ohio if at least 80% of its employees are Ohio residents or at least 80% of its payroll goes to Ohio residents. A business that does not meet either criterion can still qualify as a rural business concern if it agrees to relocate or restructure in such a way that at least 80% of its employees or 80% of its payroll are in Ohio.

The act explicitly identifies several types of business operations that cannot, by definition, qualify as a rural business concern: country clubs, gambling facilities, liquor stores, massage parlors, hot tub or suntan facilities, golf courses, businesses engaged in the development and holding of intangibles for sale, businesses that derive 15% or more of their net income from the rental or sale of real estate, and publicly traded businesses.

Before investing in a business, a rural business growth fund may request a written opinion from DSA as to whether it qualifies as a rural business concern. If DSA determines that the business qualifies, the act states that the business is a rural business concern for the purposes of the credit regardless of whether the business actually meets the criteria prescribed by the act. If DSA fails to respond to a request for a written opinion within 30 days, the agency is deemed to have determined that the business qualifies as a rural business concern. [35]

Credit recapture

DSA is not required to issue tax credit certificates to investors of a rural business growth fund that fails to invest 50% of its eligible investment authority in growth investments within one year of the closing date and to invest 100% within two years of the closing date. In addition, DSA must recapture tax credits claimed by investors of a

[35] R.C. 122.15(F), (G), (H), (I), and (J) and 122.156.

fund that, itself or through an affiliate: (1) does not maintain its growth investments until the sixth anniversary of the closing date, (2) makes a distribution or payment that results in the fund having less than 100% of its eligible investment authority invested, or (3) makes a growth investment in a business that owns, invests in, lends to, or holds a right to invest in the rural growth investment fund.

If a growth investment is sold or repaid, the investment is considered to be "maintained" so long as the fund reinvests the capital returned (minus any profits) in other growth investments within one year. A rural business growth fund's investments must be spread among at least five rural business concerns. The amount by which a loan or investment in one rural business concern (or its affiliates) exceeds 20% of the fund's eligible investment authority is not counted as a growth investment.

If DSA discovers a violation that implicates the act's recapture provisions, it must notify the rural business growth fund before recapturing the credits. If the fund corrects the violation within 30 days, no recapture occurs. If the violation is not corrected, the Superintendent of Insurance must make an assessment against each investor (or affiliate) who claimed a credit and, following the assessment, no tax credit certificate associated with the fund may be issued or utilized.[36]

Reporting requirements and annual fees

The act prescribes two separate reporting requirements for rural business growth funds. Both reports are submitted to DSA. The first report need only be filed twice, following the first and second anniversaries of the closing date. In this report, the fund must submit documentation sufficient to prove that it has met the investment threshold requirements – 50% of its eligible investment authority in year one and 100% in year two – and that it has not implicated any of the credit recapture provisions.[37]

The second report is filed annually, by March 1, beginning with the first full calendar year following the closing date and ending with the first full calendar year after the fund decertifies (as described below). This report consists of a full itemization of the fund's growth investments and a bank statement evidencing each such investment. It must identify the name, location, and industry class of each business that received a growth investment from the fund and provide evidence that the business qualified as a rural business concern at the time the investment was made. Lastly, it must state the number of employment positions that existed at each business on the date the business received the growth investment and the number of new full-time

[36] R.C. 122.153.

[37] R.C. 122.154(B).

equivalent employees resulting from the fund's investment in the business.[38] Only employees with an hourly wage of at least 150% of the federal minimum wage may be included in the computation.[39]

In addition to the reports, each rural business growth fund must remit an annual fee of $20,000 to DSA. No annual fees are required after a fund has decertified.[40]

Decertification

A rural business growth fund that has not implicated any of the act's recapture provisions may decertify on or after the sixth anniversary of the closing date. Decertification is achieved by applying to DSA, which then has 60 days to approve or deny the application. The fact that no credits awarded to investors of the fund have been recaptured is sufficient evidence to approve the fund's decertification. The act's recapture provisions do not apply to actions of the fund that occur after the date the fund is decertified.[41]

After decertification is complete, the fund might be required to pay the state a "state reimbursement amount," which measures the extent to which the fund's investments failed to result in the employment of new full-time-equivalent employees who were paid an average of $30,000 per year (and counting only those who were paid at least 150% of the federal minimum wage). The act does not directly require payment of the state reimbursement amount, but prohibits the fund from making further distributions to equity holders of the fund without having paid the amount.

The DSA Director may waive all or a portion of the state reimbursement amount if the Director determines that the fund's growth investments resulted in retention of employment positions that otherwise would have been eliminated. The amount waived may not exceed the payroll of retained employment positions if each such position was paid an average of $30,000 per year for the period of the investment. The number of retained employment positions is based on an affidavit of the CEO or president of the rural business concern.[42]

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[38] R.C. 122.154(A).

[39] R.C. 122.155.

[40] R.C. 122.154.

[41] R.C. 122.153(E).

[42] R.C. 122.155.

Business income deduction for PEO-paid compensation

The act provides that the compensation, including guaranteed payments, paid to a pass-through entity (PTE) investor by a professional employer organization (PEO) hired by the PTE is considered business income, and therefore is eligible for the business income deduction and 3% flat tax on business income, provided that the investor holds at least a 20% interest in the PTE.[43]

Continuing law allows a taxpayer to deduct the first $250,000 of the taxpayer's business income each year.[44] The deduction is available to individuals who own or invest in sole proprietorships or PTEs such as limited liability companies, S corporations, and partnerships. Any business income in excess of $250,000 is taxed at a flat rate of 3%, instead of the graduated rates, up to 4.997%, that apply to "nonbusiness" income such as wages and pensions and any interest, dividends, rents, royalties, or capital gains not received in the ordinary course of business.

For PTE investors, the deduction is available for income generated by the business that is passed through to the investors as a "distributive share." In addition, the Department of Taxation has determined that investors who hold a 20% or greater interest in the PTE may also deduct any guaranteed payments or other compensation paid by the PTE to the investor.

In the course of business, some PTEs might outsource certain human relations tasks to a professional employer organization (PEO), including the management of payroll and employee benefits. In such cases, when an individual who holds a 20% or more interest in a PTE is paid wages or other compensation by the PEO, rather than directly by the PTE, the Department of Taxation has determined that such income is not considered business income, and therefore not eligible for the business income deduction or 3% flat tax.

The act specifically allows guaranteed payments and other compensation paid by a PEO to such 20% investors to qualify for the business income deduction and 3% flat tax. In addition, the act states that its new language is intended to clarify existing law and that the language applies to taxable years beginning on or after 2013 (the first year the business income tax deduction was allowed).

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[43] A guaranteed payment generally is a payment made by a PTE to an investor that does not depend on the PTE's income. Guaranteed payments can function as compensation to an investor for services the investor performs for the PTE. See 26 U.S.C.A. 707(c).

[44] R.C. 5733.40(A)(7); Section 5. The deduction for married individuals filing separately is $125,000 for each spouse. R.C. 5747.01(A)(31), not in the act.

Veterans organization grant program

The act transfers to the Director of Veterans Services, from the Director of Budget and Management, the duty to release and process state subsidy payments to veterans organizations. Formerly, the Director of Veterans Services only advised the Director of Budget and Management that a prerequisite report from a veterans organization had been submitted and determined satisfactory, and then the Director of Budget and Management released the funds. The act retains the requirement that veterans organizations submit the reports to receive the payments.[45]

Transportation between county jails and courts

The act allows a sheriff to contract with a county court or municipal court in the sheriff's territorial jurisdiction for transportation of persons between the county jail and the court. The contract must provide for the costs of transportation services and must not apply for longer than four years. The act provides corresponding authority for a county or municipal court to contract with a sheriff.[46]

Deputy sheriffs as bailiffs

The act also makes every deputy sheriff of a county ex officio a deputy bailiff of a municipal court within the county. A deputy sheriff must perform without additional compensation any duties in respect to cases within the court's jurisdiction that are required by a judge, the clerk of court, or a bailiff or deputy bailiff of the court. Former law applied only to deputy sheriffs of Putnam County in service as ex officio bailiffs of the Putnam County Municipal Court.[47]

Similarly, the act makes every deputy sheriff of a county ex officio a bailiff of a county court within that county when the county court appoints a bailiff. A deputy sheriff is not permitted to perform county court services similar to those performed by the sheriff for the court of common pleas unless the court requests those services. Under continuing law, if a county court does not appoint a bailiff, every deputy sheriff of that county is ex officio a bailiff of the county court.[48]

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[45] R.C. 5902.02; repealed R.C. 126.211; Section 10.

[46] R.C. 311.29(G), 1901.321, and 1907.531.

[47] R.C. 1901.32(A)(6).

[48] R.C. 1907.53(B)(1).

Appropriations and earmarks

The act makes several appropriations and adjustments to existing earmarks. For a detailed discussion of those provisions, see the LSC Fiscal Note at https://www.legislature.ohio.gov/download?key=8407&format=pdf.

HISTORY

ACTION	DATE
Introduced	01-31-17
Reported, S. Education	05-17-17
Passed Senate (33-0)	05-17-17
Reported, H. Education & Career Readiness	06-21-17
Passed House (97-0)	07-06-17
Senate refused to concur in House amendments (0-32)	09-20-17
House requested conference committee	09-20-17
Senate acceded to request for conference committee	09-26-17
Senate agreed to conference committee report (32-0)	11-15-17
House agreed to conference committee report (88-4)	11-29-17

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