OHIO LEGISLATIVE SERVICE COMMISSION

Bill Analysis

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S.B. 309

132nd General Assembly
(As Introduced)

Sens. Peterson and Kunze, Beagle, Uecker, Bacon, Oelslager

BILL SUMMARY

- Authorizes the following tax incentives for the operators and certain suppliers of a "megaproject," i.e., a development project that includes $1 billion in investment or creates at least $50 million in Ohio payroll:
  - Lengthening the maximum term of the refundable Job Creation Tax Credit (JCTC) from the current 15 years to 30 years.
  - Assignment of all or a portion of a megaproject supplier's JCTC to the megaproject's operator.
  - A commercial activity tax exclusion for gross receipts of a megaproject supplier from sales to a megaproject operator.
  - Lengthening the maximum term of local community reinvestment area or enterprise zone property tax exemptions to 30 years.
- Requires or authorizes forfeiture of those incentives if the project ceases to qualify as a megaproject.

CONTENT AND OPERATION

Megaproject tax incentives

The bill authorizes several special tax incentives for operators and certain suppliers of a "megaproject," i.e., a large-scale development that meets certain investment or payroll thresholds. Specifically, the bill (1) increases the maximum number of years, from 15 to 30, over which the operator or supplier may receive a Job Creation Tax Credit (JCTC), (2) authorizes a megaproject supplier's JCTC to be wholly or partially allocated to the megaproject's operator, (3) authorizes a megaproject supplier, in calculating its commercial activity tax, to exclude its gross receipts from sales to a megaproject operator, and (4) authorizes local governments to grant a 30-year commercial reinvestment area or enterprise zone property tax exemption to a megaproject or property owned by a megaproject supplier.

Qualifying projects and suppliers

Before a business may qualify for any of these enhanced incentives, it must either operate a "megaproject" or sell tangible personal property to one. A megaproject is a development project that satisfies all of the following conditions:

(1) The operator must compensate the project's employees at 300% of the federal minimum wage or more. (The federal minimum wage is currently $7.25 per hour for nonexempt employees, so this income threshold would equal $21.75 per hour.) This wage threshold is calculated exclusive of employee benefits and must be met at the time the project is approved for a JCTC (see below).

(2) The operator must either make at least $1 billion in fixed-asset investments in the project or create at the project at least $50 million in annual Ohio employee payroll, i.e., payroll subject to Ohio income tax.

(3) If the project qualifies on the basis of Ohio employee payroll, the operator must maintain at least $50 million in annual payroll at the project throughout the term of the JCTC (see below).

(4) The project requires "unique sites, extremely robust utility service, and a technically skilled workforce."[1]

In addition to the megaproject's operator, certain suppliers of a megaproject are eligible for the bill's incentives (referred to in this analysis as a "qualifying megaproject supplier"). Specifically, any business that sells tangible personal property may qualify for the incentives if it satisfies both of the following requirements:

(1) The business makes at least $100 million in fixed-asset investments in Ohio;

(2) The business creates at least $10 million in annual Ohio employee payroll and maintains that level of payroll throughout the term of the JCTC (see below).[2]

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[1] R.C. 122.17(A)(10) and (11).

[2] R.C. 122.17(A)(12).

Job Creation Tax Credit

A megaproject operator or qualifying megaproject supplier must be approved by the Ohio Tax Credit Authority (OTCA) to receive a JCTC before the operator or supplier may qualify for the bill's other incentives. A JCTC is a refundable tax credit that may be taken against the state's income tax, commercial activity tax, or financial institutions tax. The credit equals a percentage of additional annual Ohio employee payroll that a business generates at an Ohio-based project above a baseline amount of payroll generated at the site in the 12 months before the site was approved for the credit. Currently, the credit may be awarded for up to 15 years.

To obtain a JCTC, a business is required to apply to and enter into an agreement with OTCA, a five-member board that includes the Director of Development Services. The agreement sets out specific terms and conditions a project is required to meet as a condition of receiving the credit. The Director annually evaluates a project's compliance with the agreement and, if compliant, issues a certificate with the credit amount the business may claim for the year (referred to in this analysis as an "annual compliance certificate").

Maximum term

The bill increases the maximum number of years that a JCTC may be awarded from 15 to 30 years for a business that is a megaproject operator or qualifying megaproject supplier.[3] As a condition of continuing to receive annual compliance certificates during the term of the JCTC, the bill specifically requires the operator or supplier to meet the megaproject qualifications described above.[4] If those qualifications are not met, the Director of Development Services is required to notify the Tax Commissioner, presumably to assist the Commissioner in determining whether a megaproject supplier is eligible for the bill's commercial activity tax exclusion (see below).[5] As with other noncompliant projects, OTCA may reduce the term or amount of a noncompliant megaproject operator's or supplier's JCTC or may require the operator or supplier to repay credits already claimed.[6]

[3] R.C. 122.17(D)(2)(c).

[4] R.C. 122.17(D)(11).

[5] R.C. 122.17(T).

[6] R.C. 122.17(E) and (K).

Allocation of supplier's JCTC

If a megaproject supplier is awarded a JCTC, the bill authorizes the JCTC agreement to allocate all or a portion of the supplier's credit to the operator of the megaproject to which the supplier sells tangible personal property. The Director of Development Services is required to issue annual compliance certificates to any operator allocated a portion of a supplier's credit in this manner, though the operator's compliance is based on the supplier's performance.[7]

Commercial activity tax exclusion

Continuing law imposes the commercial activity tax (CAT) based on a business's taxable gross receipts from sales in Ohio. CAT is remitted on an annual or quarterly basis (referred to as a "tax period") depending on the amount of taxable gross receipts. The bill authorizes a qualifying megaproject supplier to exclude, in calculating the supplier's taxable gross receipts, any gross receipts from the sale of tangible personal property to a megaproject operator that has been awarded a JCTC.[8] However, before claiming the exclusion, the supplier must (1) have been awarded a JCTC and (2) appear on a list that the megaproject operator certifies to the Tax Commissioner (see below).

Supplier list and certificate

In connection with the bill's CAT exclusion, each megaproject operator that has been awarded a JCTC is required to annually furnish to the Tax Commissioner a list of its qualifying megaproject suppliers and to update that list in the interim as needed. The Commissioner in turn is required to issue a certificate to the operator and each listed supplier containing the names of the operator and each such supplier. A supplier may qualify for the bill's CAT exclusion only if the supplier is listed on that certificate. Operators and suppliers must retain a copy of these certificates for four years after their issuance.[9]

Clawback

The bill requires a supplier to repay an amount equivalent to CAT not remitted in a tax period as a result of taking the bill's exclusion if, during that period, the supplier does not actually qualify for the exclusion. Specifically, the amount to be repaid equals the supplier's gross receipts from sales to the operator in that tax period multiplied by the general 0.26% CAT rate applicable to annual gross receipts in excess

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[7] R.C. 122.17(D)(7) and (10).

[8] R.C. 5751.01(F)(2)(ll).

[9] R.C. 5751.052.

of $1 million.[10] (CAT on the first $1 million in annual gross receipt is a flat amount that varies depending upon the business' taxable gross receipts.) Additionally, the bill permanently disqualifies a supplier from qualifying for the exclusion if the supplier has taken, but failed to qualify for, the exclusion for three consecutive years.[11]

Property tax exemptions

The bill authorizes counties and municipal corporations to grant up to a 30-year enterprise zone (EZ) or community reinvestment area (CRA) property tax exemption to the site of a megaproject or a site owned and operated by a qualifying megaproject supplier ("qualifying site"), provided the megaproject operator or supplier, respectively, has been awarded a JCTC.[12] Under current law, EZ and CRA exemptions are generally limited to no more than a 15-year term. If either exemption is granted to a qualifying site, the property owner is required to annually certify to the county or municipal corporation that the megaproject operator or supplier holds a JCTC annual compliance certificate. If the operator or supplier does not hold such a certificate, the county or municipal corporation may terminate the exemption beginning with the tax year in which the termination decision is made.[13]

Summary of enterprise zone law

Under continuing law, counties and municipal corporations may designate areas within the county or municipal corporation as "enterprise zones." After the EZ designation is approved by the Director of Development Services, the county or municipal corporation may then enter into enterprise zone agreements with businesses for the purpose of fostering economic development in the zone. Under an enterprise zone agreement, the business agrees to establish or expand within the enterprise zone or to relocate its operations to the zone in exchange for tax exemptions for the development's increased property value and other incentives. In general, a school board of the district in which an EZ is located is required to approve any exemption in excess of 75% of the property's increased value or an exemption for a period of years in excess of 10.

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[10] R.C. 5751.091(A).

[11] R.C. 5751.091(B).

[12] R.C. 3735.67(D)(2), 5709.61, 5709.62(C)(4), 5709.63(B)(3), and 5709.632(C).

[13] R.C. 3735.671(C)(11) and 5709.631(B)(13).

Summary of community reinvestment area law

Ohio's CRA law authorizes counties and municipal corporations to designate certain areas as "community reinvestment areas" to encourage new construction or the remodeling of existing structures. Similar to an EZ, after a CRA is approved by the Director of Development Services, the county or municipal corporation may enter into an agreement with a business exempting the increased value of new construction or remodeling of a commercial or industrial structure in the CRA in exchange for the creation or retention of jobs at the structure. (Unlike an EZ, residential construction and remodeling may also qualify for a CRA exemption, but no agreement is required for residential exemptions.) Before commercial or industrial property may receive a CRA exemption, the exemption must be approved by the school board of the district in which the property is located, unless the exemption is for less than 50% of the property's increased value.

HISTORY

ACTION	DATE
Introduced	06-07-18

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