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Sub. HB 182 (-5 version) JEDDs
Senate Ways & Means Committee
May 18, 2016

Mr. Chairman and members of the Committee, on behalf of the Ohio Township Association (OTA), thank you for the opportunity to express our concerns with two specific provisions of Sub. HB 182 (-5 version) pending before you this morning. Just like you heard Dan Navin of the Ohio Chamber of Commerce state in testimony on May 4, the OTA feels the JEDD law has worked reasonably well and constitutes an effective tool for commercial and industrial development.

First, I would like to thank the sponsor, Representative Schuring, for working with us on this legislation. The legislation before the committee includes several provisions at our suggestion. Those include annexation clarification, mixed use development definition, allocation of costs, and removing the Director of the Development Services Agency from the opt-out proceedings. While we appreciate the items that have been included in the legislation, the OTA respectfully requests two changes that were altered by the -5 version of HB 182. We would like the language to revert back to what was included in the As Passed by the House version.

Use of JEDD Revenue

The flexibility to utilize JEDD revenue is crucial to the success of JEDDs, particularly in townships. Pursuant to current law (R.C. §715.74 (C)(1)) and the As Passed by the House version of Sub. HB 182, the contracting parties may levy an income tax in the JEDD territory. The income tax shall be used to carry out the purposes of the district and for the purposes of the contracting parties. The As Passed by the House version of Sub. HB 182 specifically stated the "economic development plan" of the district and "any other lawful" purposes of the contracting parties were legitimate expenditures of JEDD revenue.

The language before the Committee today (-5 version) requires the revenue from the imposed income tax to first be used to carry out the economic development plan for the district and only after the conditions of the economic development plan have been satisfied, may the revenue be used for any lawful purpose.

Townships have every motivation to see JEDDs succeed and are not going to do anything that hinder their success. Townships have a financial incentive to see businesses in a JEDD do well. However, it is hard to forecast the needs of development or redevelopment. The JEDD contracting parties, nor the JEDD Board of Directors, upon which businesses and employees are represented, can anticipate every need. Unforeseen events, such as acts of God or unexpected development in a neighboring community, may necessitate the use of JEDD revenue in unanticipated ways.

Litmus Test for Opting Out of JEDD

Sub. HB 182 gives the owner of a business in the JEDD the option of opting out. In the -5 version, the request for opt-out would be through an expedited court process. Our preference would be that the JEDD laws not contain this unusual provision that allows a tax payer to opt-out of paying taxes. But, if HB 182 is to contain such an unusual provision, it should not set forth a test that any government would find nearly impossible to meet. The key factor for the court to consider is set forth in §715.72 (Q)(1)(c):

> *(c) Neither the business nor its employees has derived or will derive a substantial economic benefit from the new, expanded, or additional services, facilities, or improvements described in the economic development plan for the district, or the economic benefit that has, or will be, derived is negligible in comparison to the income tax revenue generated from the net profits of the business and the income of employees of the business.*

This differs from the As Passed by the House language in two key aspects. The House passed version stated that neither the business nor its employees had derived a "material" benefit from the JEDD. The second difference concerns the second part of the litmus test. The new version of HB 182 before the Committee allows the business out of the JEDD if the economic benefit is negligible in comparison to the income tax revenue generated by the business and its employees. The As Passed by the House version states the "material" benefit is negligible.

Black's Law Dictionary defines substantial as "of considerable value." Material is defined as "more or less necessary; having influence or effect…" The bar has been raised considerably by this proposed change in the -5 version of HB 182. If there is to be this highly unusual option of leaving a JEDD, shouldn't there need to be a compelling case made by the business, rather than just asserting that the business hasn't or won't receive "a substantial economic benefit" from being in a JEDD?

Likewise, if a business is receiving a benefit from being in a JEDD (e.g., improved roads, street lighting, increased police patrols) but the benefits are deemed to not be "economic" or are not enough when compared to the taxes paid, the business would be let out of the JEDD. The House passed version strikes a better balance on this option given to JEDD businesses and taxpayers.

If it is easy to get out of a JEDD, and would be under the standards set forth in the current version of HB 182 before the Senate Ways and Means Committee, townships and municipalities will go through a lot of time and expense in creating a JEDD, only to have it undone when taxpayers decide to opt-out. This is unworkable and would deal a serious blow to JEDDs, which have been used very successfully by many townships to foster economic development and stave off annexation. For every business that opts out of (or leaves) a JEDD and stops paying taxes to the JEDD, it will be that much harder for the JEDD to confer a "substantial economic benefit" on the entities remaining in the JEDD, due to the diminished tax revenue available as entities opt out.

Mr. Chairman, I appreciate the opportunity to express our position on these two issues. I would be happy to answer any questions you or the Committee members may have.