

Economic Development Incentives Changes in Am. Sub. H.B. 153

If you have questions about the changes discussed in this alert, please contact one of the following:

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On July 1, 2011, Governor Kasich signed Am. Sub. House Bill 153 (the “Bill”), the biennial Budget Bill. The purpose of this Alert is to summarize the key economic development incentives-related provisions of the Bill.

Changes to the Job Retention Tax Credit (“JRTC”):

The Bill includes two significant changes to the JRTC program. First, JRTC recipients no longer have to retain at least 500 full-time equivalent employees to qualify for the JRTC if they have retained payroll at the project site of at least \$35 million. Second, the Bill included provisions for a refundable JRTC, which is normally non-refundable, if all of the following are met: (1) the JRTC was approved between July 1, 2011 and January 1, 2014; (2) there is retained payroll at the site of at least \$20 million; and (3) the recipient invests at least \$5 million in capital improvements in its principal place of business.

Data Center Sales and Use Tax Exemption:

The Bill provides for a new sales and use tax exemption for equipment used in the operation of a computer data center business. To qualify, businesses must invest at least \$100 million in capital improvements in Ohio over a three year period, and must have payroll at the site of at least \$5 million during the term of the exemption. The Ohio Tax Credit Authority is responsible for approving the exemption, which may be a partial or full exemption.

Establishment of the InvestOhio Program:

The Bill establishes the InvestOhio program, which provides non-refundable Ohio income tax credits to investors in certain Ohio “small business enterprises,” with unused portions of the credit carried forward for up to seven years. The credit is equal to 10% of total “qualifying

investment” made, but the total amount of credits that may be claimed by any one investor is limited to \$1 million in each fiscal biennium. In addition, the amount of credits issued by the Director of Development in any fiscal biennium is limited to \$100 million, which equates to investments of \$1 billion. The credits are provided on a first-come, first-served basis in each biennium.

Changes to the Ohio Historic Tax Credit (“HTC”) Program:

The Bill extends the HTC program indefinitely, although the \$60 million HTC limit per application period still applies. The Bill also allows the Ohio Department of Development (“ODOD”) and the Ohio Historic Preservation Office to charge reasonable fees for the administration of the program. Project costs of greater than \$200,000 now must be certified by an accountant. Finally, the HTC can be awarded either after completion of the rehabilitation or after completion of a stage of the rehabilitation, depending on the length of the rehabilitation period. Applicants are required to repay any amounts received if the project is not completed.

Changes to Tax Increment Financing (“TIF”) Notice and Compensation Requirements:

The Bill gives joint vocational school districts (“JVSDs”) additional rights with respect to the approval of TIF exemptions. If a political subdivision or a private entity enters into compensation agreement with a local school district (“LSD”), that political subdivision or private entity is required to provide an affected JVSD with compensation under the same terms as provided to the LSD. In addition, if a political subdivision is required to provide an LSD with notice of a TIF exemption, the political subdivision also is required to provide an affected JVSD with 45-days notice of the TIF exemption.

Extension of Enterprise Zone (“EZ”) Program Sunset Date:

The EZ program was previously scheduled to sunset as of October 15, 2011. The Bill extends this sunset date until October 15, 2012.

Prevailing Wage Law Changes:

The Bill makes several significant changes to the prevailing wage requirements. In particular, specific prevailing wage requirements were repealed for the following: the Ohio Job Ready Sites program; port authority projects; certain projects funded under Ohio Revised Code (“R.C.”) Chapter 122; certain projects funded with industrial revenue bonds under R.C. Chapter 165; loans funded under R.C. Chapter 166 (166 Direct Loans, R&D Loans, Innovation Ohio Loans, OEBF); energy resource projects under R.C. Chapter 1551; community urban redevelopment corporation projects under R.C. Chapter 1728; Ohio Air Quality Development Authority projects under R.C. Chapter 3706; and Ohio Rail Development Corporation projects under R.C. Sections 4981.11 – 4981.26.

Extension of Date For Filing Exemption Applications For Qualified Energy Facilities:

In order to qualify for a property tax exemption for a “qualified energy project,” applications were previously required to file an exemption application with ODOD no later than December 31, 2011. The Bill extends the application deadline, as well as other key deadlines associated with this exemption program, by two years.

The changes to the HTC program went into immediate effect. The remaining changes discussed in this Alert will be effective 90 days after the Bill was signed by Governor Kasich and presented to the Secretary of State, or approximately October 1, 2011.

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