

NEW LEGISLATION ALLOWS FOR THE INCLUSION OF PROPERTY ZONED FOR RESIDENTIAL USE IN JEDDS

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The Ohio General Assembly recently passed Amended Substitute House Bill Number 562 (“HB 562”), the Capital Budget and Budget Corrections Bill which, among numerous other actions, amends the law pertaining to joint economic development districts (“JEDDs”). This legislative change, effective September 23, 2008, may be beneficial to townships because new mixed-use development projects may now be included in a JEDD, and any income taxes levied by the JEDD will be collectible from the commercial portions of such development projects.

Background

JEDDs are special-purpose districts that may be created by a combination of townships and municipal corporations for the purpose of “facilitating economic development to create or preserve jobs and employment opportunities and to improve the economic welfare” of residents of the townships and municipalities creating these districts, as well as the State of Ohio. There are three statutory procedures by which JEDDs can be formed, only one of which is affected by HB 562. The procedure that is used by townships and municipalities throughout the state, termed an “alternative” procedure and governed by R.C. 715.72 to 715.81, is the procedure amended by HB 562.

Electors May Now Reside in Areas Included in JEDDs—but Pay Attention to the Move-in Date!

Prior to HB 562, the criteria for inclusion of an area or areas within a JEDD under the “alternative” procedure were as follows:

1. The area or areas must be located within the territory of one or more of the contracting parties and may consist of all of that territory.
2. No electors may reside within the area or areas and **no part of such area or areas may be zoned for residential use.**
3. The area or areas cannot include any parcel of land owned in fee or leased to a municipality or township, unless the municipality or township is both a contracting party to the JEDD and has given its consent for such inclusion by the adoption of an ordinance or resolution.

HB 562 changes the second criterion above, amending R.C. 715.73 to remove the ban on residentially zoned property being included in a JEDD and to allow for electors to reside in a JEDD, so long as they do not move into the JEDD until after the effective date of the contract creating the JEDD. In other words, HB 562 allows zoning classifications that permit residents (residential, mixed-use, etc.) to be included at the inception of the JEDD, but the actual residents cannot move into these properties until after the effective date of the JEDD contract.

The effect of HB 562 will be to allow for the inclusion of new residential development in a JEDD, prior to such development projects being inhabited. It is important to note that there is no impact on existing residential properties that are already inhabited, which are still prohibited from being included in a JEDD under the “alternative” procedure.

The Impact of Including Residentially Zoned Areas in JEDDs

The main impact of the legislative change involves taxation. When a JEDD is created, the parties to the JEDD establish their rights and duties pursuant to a contract. The contract creating a JEDD may provide that the governing body—a board of directors of the district—is authorized to adopt a resolution to levy an income tax within the district. The contract may also designate certain portions of the district where that income tax will be levied. Prior to HB 562, the income tax levied in a JEDD was based upon the income earned by persons working within the JEDD and the net profits of businesses located in the JEDD. This remains true after HB 562; however, the new legislation amends R.C. 715.74 to explicitly exempt from taxation the income of any individuals residing in the JEDD, unless that income is received for personal services performed in the JEDD. This means that residents moving into a JEDD are not subject to the income tax levied by that JEDD unless they also work in the district.

How does this affect a township that may become a contracting party to a JEDD after HB 562? The key to the legislative changes can be found in the impact on mixed-use development. Under the old law, if a developer had a mixed-use project where, for example, portions of a single building were dedicated for residential use and portions were planned for commercial use, the property could not be included in a JEDD because it would violate the prohibition on electors residing in the JEDD. After HB 562, such a project is able to be part of a JEDD, and the commercial portions of that project can be subjected to any income tax levied. Although the residential portions do not provide any income tax benefit to the JEDD, the commercial portions do, resulting in a net gain of collectible income tax levied by a JEDD and thereby available to further the economic development goals of the JEDD and the JEDD parties, including participating townships.

It is worth reiterating that HB 562 will not adversely impact township residents based upon where they choose to live. There are no income tax implications of this new legislation based solely upon the place of residence. The legislative changes merely allow for additional types of zoning classifications, amounting to increased types of development projects, to be included in a JEDD. HB 562 does not change the requirement that income taxes can only be levied by a JEDD based upon the income earned by persons working within a JEDD and the net profits of businesses located in a JEDD. This new legislation will change the nature of the JEDD as an economic tool for townships in a positive way by increasing the potential income tax base from which a JEDD board may levy, particularly through the newfound ability to include mixed-use development projects in JEDDs.