

Principles of Public Finance: Special Purpose Money and the Pipeline Valuation Saga

Ohio Association of Public Treasurers

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Topics Addressed



- Where we are headed:
 - Sources of Funding Capital Improvements
 - General Debt Concepts
 - Debt Limitations
 - Financing Alternatives Not Generally Payable from General Fund Revenues



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Sources of Funding Permanent Improvements



- Cash
 - Property Taxes
 - Income Taxes
 - User Fees
 - Other Government Revenues
 - Economic Development Compensation Payments
- Debt Issuance-highly regulated by statutes

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Debt Concepts



- Bonds, Notes, Bond Anticipation Notes
- General Obligations
 - Voted vs. Unvoted
- Special Assessment Debt
- Revenue or Special Obligations

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Debt Concepts – General Obligation (G.O.) Debt



- “Full faith and credit and general taxing power” of subdivision is pledged to pay debt service
- May be paid out of General Fund of Issuer
- Priority over operating expenses of Issuer
- Subject to specific state constitutional and statutory limitations

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Debt Concepts - General Obligation Debt



- Voted G.O. Debt
 - specifically approved by voters
 - special tax authorized (but not required to be levied)
 - unlimited as to rate or amount
 - most secure of all debt (best security, highest rating, lowest interest cost)
- Unvoted G.O. Debt
 - first claim against revenues but no special tax
 - includes most special assessment debt

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Direct Debt Limitations – Municipal Example



- Unvoted Debt Limitation is 5.5% of total tax valuation
- Voted + Unvoted Debt Limitation is 10.5% of total tax valuation
- Example: total assessed valuation of City X is \$400,000,000, so unvoted debt capacity is \$22,000,000 and total debt capacity is \$42,000,000

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Direct Debt Limitations – Municipal Example



- Municipal Exemptions to the Direct Debt Limitations
 - Utility, Parking, Healthcare, Waste Management, Urban Redevelopment, Public Attraction, Natural Resource, and Correctional Facilities (ORC 133.05)
 - Income Tax Appropriation Bonds (ORC 133.05)
 - Motor Vehicle License and Gasoline Tax Bonds (ORC 133.05)
 - Public Improvements in Blighted Areas (ORC 5709.40(D))
 - Energy Conservation (ORC 717.02)

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Indirect Debt Limitation



- ORC 5705.02 imposes a ten-mill (1.0%) limitation on each dollar of tax valuation
- The “ten-mill limitation” applies to the aggregate amount of taxes which may be levied for payment of debt service (principal and interest) on UNVOTED general obligations issued by all overlapping subdivisions taxing the same property
- Voter approval means the “ten-mill limitation” does not apply (“in excess of the ten mill limitation”)

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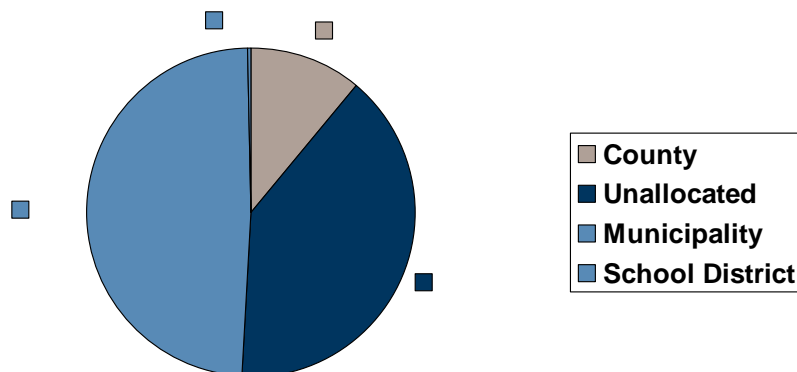
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Indirect Debt Limitation



Example of 10-Mill Allocation:



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Indirect Debt Limitation



- Millage Calculation Example:
 - annual debt service for unvoted debt of subdivision X is \$200,000; total assessed value of subdivision X is \$100,000,000
 - Millage Calculation:
$$\frac{\text{Total Annual Debt Service}}{\text{Total Assessed Valuation}} \times 1000$$

$$(\$200,000 / \$100,000,000) \times 1000 = 2 \text{ mills}$$
- Ten Mill Certificate

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Financing Alternatives Not Generally Payable from General Fund Revenues

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Special Assessments



- ORC Sections 727 & 729
 - ORC Section 727 – roads, water, sewer, utilities, parking structures
 - ORC 729 – sidewalks, curbs, gutters
- General obligation debt, subject to 10 mill limitation but not subject to the direct debt limits
- Voluntary v. Involuntary
 - Voluntary requires petition of property owners
 - Involuntary is an extensive process

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Special Assessments – Important Considerations



- Assessment may not exceed 1/3 of actual value of property as improved
- A small portion of project must still be paid by political subdivision (2% and cost of intersections)

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Special or Revenue Obligations



- Limited pledge of only a specific revenue stream to pay debt service
 - Utility revenues (water, sewer, electricity, etc.)
 - Tax Increment Finance (TIF) revenues
 - Income tax revenues (Municipality – Home Rule)
- Less secure than G.O. Debt

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Considerations for Special or Revenue Obligations



- Revenue Source (TIF, utility, levy, tax)
- Number and type of users
- Coverage ratio
- Debt service reserve fund
- Additional security
- Trust indenture and related documents

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Voted Levies & Bonds



➤ Voted Levies

- ORC 5705.19 – permits political subdivisions to seek voter approval for a tax levy to pay for a variety of improvements including:
 - A specific class of permanent improvements that may be included in a bond issue
 - General construction, reconstruction, resurfacing, and repair of streets, roads, and bridges
 - Parks and recreational purposes

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Voted Levies & Bonds



➤ Voted Bonds

- ORC 133.18 – permits political subdivisions to seek voter approval for a bond issue for improvements that have a useful life of five years or greater

➤ Voted Levies and Bonds

- Both require the passage of two pieces of legislation (Resolution of Necessity and Resolution to Proceed)

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Pipeline Valuation Saga



- Rover pipeline covers 18 Ohio counties, Nexus pipeline 14 and Buckeye and Leach pipelines 9
- Valuation Process (Public Utility Tangible Personal Property)
 - Tax Commissioner notifies utility of proposed value
 - Taxpayer petition for reassessment (non-public administrative hearing)
 - Final Determination of Tax Commissioner
 - Rover Pipeline, LLC and Nexus Gas Transmission, LLC Final Determinations were rendered July 18, 2020

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Pipeline Valuation Appeal (BTA)



- Appeal of Final Determination to Board of Tax Appeals (BTA)
 - Both Rover and Nexus have filed appeals at the BTA
 - Only County Auditor has standing to participate in a BTA appeals; other local governments cannot
 - Appeal similar to trial court procedure with witnesses, evidence and public hearing
 - Original hearings postponed and now scheduled for February 14, 2022 (Nexus) and May 9, 2022 (Rover)

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Appeal from BTA to Court



- BTA decision may be appealed to Ohio Supreme Court or Courts of Appeal where property is located
 - Taxpayer or County Auditor may file
 - Only local government with standing is County Auditor

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Tender Pay, Interest and Penalties



- Taxpayer must pay tax on undisputed amount during appeal period (tender pay)
 - Interest will accrue on less than the full amount of taxes as finally determined per statutory formula (R.C. § 5727.47)
 - Penalties may accrue, depending on amount of underpayment (R.C. § 323.21)

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Economic Development Revenue Sources

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Roadmap



- What is economic development?
- What are some more advanced economic development tools and how do they work?
- Examples along the way.

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Economic Development



- Simple definition: activities which promote investment, create jobs, and enhance communities.
- Generally includes collaboration between government entities and private entities

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Economic Development



- Ohio Constitution Definition: Certain activities which:
 - “create or preserve jobs and employment opportunities,”
 - “improve the economic welfare of the people of the state,”
 - “control air, water, and thermal pollution,” or
 - “dispose of solid waste”
- Article VIII, Section 13

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Economic Development



- From a local government point of view, economic development consists of deploying various tools which advance those goals.
- Three types of tools:
 - Add additional tax item (special assessment, NCA)
 - Abate existing tax items (CRA, EZ, sales tax abatement)
 - Redirect existing tax items (TIF, DRD)

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Economic Development



- Economic development can also include creating or partnering with special entities created for the purpose of advancing economic development, such as:
 - New Community Authorities
 - Port Authorities
 - Special Improvement Districts
 - Community Improvement Corporations

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Economic Development Tools



- Tax Increment Financing (TIF)
- New Community Authorities (NCA)
- Downtown Redevelopment Districts / Innovation Districts (DRD/ID)
- Joint Economic Development Districts (JEDD)

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Tax Increment Financing (TIF)

- Redirect new tax property tax revenue in connection with a new development (or redevelopment) away from normal recipients and toward payment of costs of improvements that benefit that development
 - Infrastructure Improvements
 - Direct Development Costs

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Redirect Taxes – Increment

- Increase in real estate taxes resulting from development over and above the value prior to the date that the development occurred.
- Existing taxes continue to go to taxing districts (i.e., schools, county, city, continue to receive predevelopment tax revenues).
- Property owner does **NOT** receive a tax break-- Service Payments in Lieu of Taxes (PILOTs). But could be used in conjunction with a tax abatement

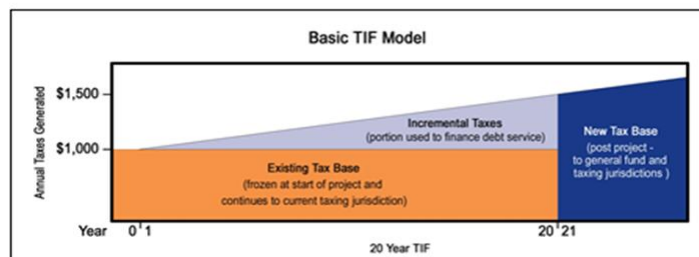
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Redirect Taxes – TIF

TIF Revenue Stream



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Redirect Taxes – TIF

- TIF – Six Types!
- 1) Project TIF
- 2) Incentive District TIF
- 3) Urban Redevelopment TIF
- 4) Urban Renewal TIF
- 5) Community Urban Redevelopment Corp. TIF
- 6) Downtown Redevelopment TIF

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Types of TIFs

- Project TIF (Commercial, including apartments)
 - Municipality: R.C. § 5709.40(B)
 - Comprised of individual parcels
 - Public improvements must “directly benefit” parcels exempted
- Incentive District TIF (Residential)
 - Municipality: R.C. § 5709.40(C)
 - Up to 300 contiguous acres exhibiting one or more characteristics of economic distress
 - Public improvements do not need to directly benefit every parcel, but must “benefit or serve” the district created

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Types of TIFs

- Municipal Urban Redevelopment TIF
(R.C. § 5709.41)
 - Unique TIF used in urban redevelopment setting
 - Municipality must be in chain of title
 - “Urban redevelopment” requirement instead of “direct benefit” requirement
 - Residential only if blighted area of an impacted city
 - More flexible use of TIF revenue permitted

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Redirect Taxes – TIF

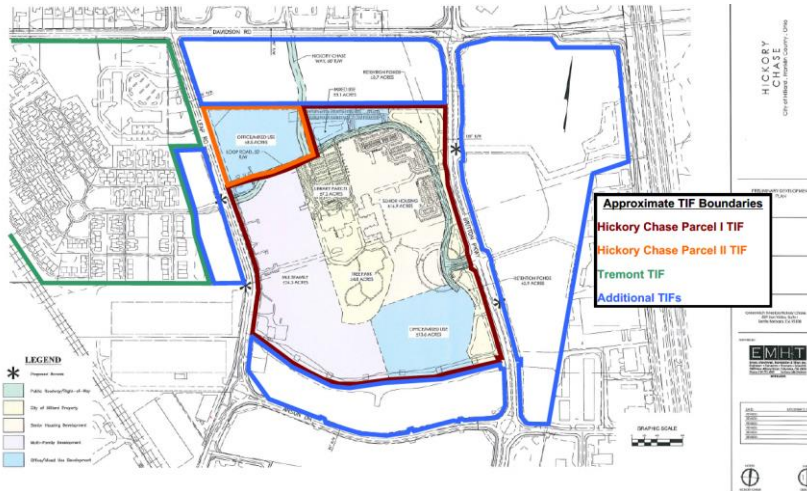
- Uses of TIF Revenue:
 - Public Infrastructure
 - Land Acquisition
 - Demolition
 - Utilities
 - NEW – Road, Water, and Sewer Maintenance
 - Planning/Soft Costs
 - Debt Service (by municipality or other issuer)
 - Private Costs of Development (Special TIFs Only)

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TIF Example



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New Community Authorities



➤ General Characteristics

- Newly popular economic development tool designed to create used-paid revenue streams for public infrastructure projects
- A separate governmental body organized to encourage the orderly development of an economically sound new community
- Developer driven
 - All acreage must be owned or controlled, through leases of at least 75 years' duration, options, or contracts to purchase
 - Developer is represented on board
 - Until March 22, 2019—large developments only—minimum 1,000 acres unless wholly within a municipality or at least half of territory is within JEDD
 - After March 22, 2019—no minimum acreage required regardless of location

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New Community Authorities



➤ Formation

- Procedure for creation
 - Developer files petition with “organizational board” (board of county commissioners / legislative authority of municipal corporation)
 - Petition must include, among other things, plan that sets forth development program for district
 - Organizational board must hold hearing and must approve creation if district is conducive to the public health, safety, convenience, and welfare

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New Community Authorities



➤ Powers

- Board
 - Appointed by developer, county, and local government until certain population levels met
- Revenue
 - Community development charge
 - Runs with land through declaration
 - An assessment providing a special benefit, not a tax
 - Flexible--can be based on millage, residents' income, gross receipts, business revenues (including lease rentals), other bases
- Issue taxable or tax-exempt bonds or other obligations

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New Community Authorities



- No general power to offer traditional governmental services
- “Community Facilities”
 - Public buildings, centers and plazas, auditoriums, day care centers, recreation halls, educational facilities, recreational facilities
 - Parks and other open space land, lakes and streams, cultural facilities
 - Streets, pathway and bikeway systems, pedestrian underpasses and overpasses, lighting facilities, design amenities
 - Buildings needed in connection with water supply or sewage disposal installations or steam, gas, or electric lines or installation, telecommunications facilities

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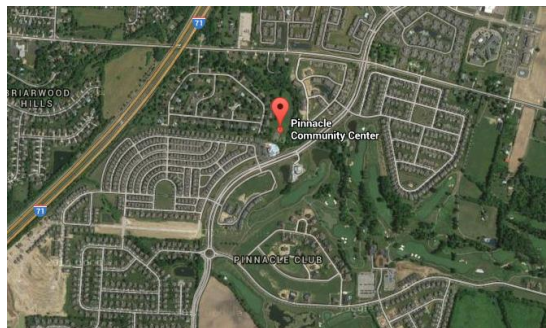
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Pinnacle Community Authority



- Debt service charge allocated on acreage
- Multiple housing types (condos, single family, estates)
- Used to pay for streets, sidewalks, water retention, landscaping



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Concord/Scioto Community Authority



- 10.25 mills
- Sewer tap fees
- Sewer improvements
- Infrastructure
- Approx. 15,000 acres
- Formed with 1,000 acres
- Subsequently expanded



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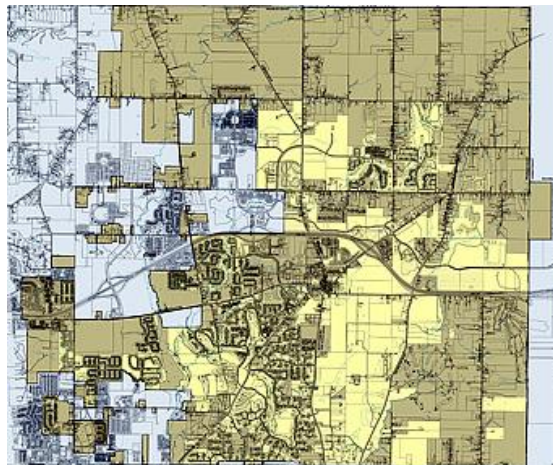
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New Albany Community Authority



- 9.75 mill charge
- Currently 4.75 mills
- Example of NCA as city policy
- Example of NCA as school district policy (see also Galena NCA)



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Gravity II New Community Authority



- Public parking garage
 - TIF
 - NCA (backstop to TIF)
 - Parking Revenue



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Bridge Park New Community Authority



- Four charges:
 - Assessed valuation
 - Debt service coverage
 - Retail charge
 - Hotel charge
- Combined with TIF to finance three parking garages and multiple streets (so far)



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Downtown Redevelopment Districts



- New tools for municipalities to promote redevelopment of historic downtowns
- Offer (1) opportunities for new property tax exemptions and (2) redevelopment charges that can be applied flexibly for redevelopment purposes
- Additional feature is innovation districts - mechanism to fund high-speed internet and related infrastructure

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DRDs: Background



- Nationally, increasing demand for opportunities to work and live in historic downtown communities, especially in innovation economy and among millennials and baby boomers
- Ohio has many beautiful, historic downtowns, thanks to its explosive growth years during the first half of the 20th century
- Redevelopment of historic properties and neighborhoods is often more expensive than “greenfield development”

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DRDs: Background



- Many communities do not have the resources necessary to kick-start redevelopment efforts
- Downtown needs include:
 - Façade improvements
 - Historic preservation
 - High-speed internet connectivity for business incubators and innovators
 - Streetscaping
 - Amenities to accommodate downtown living
 - Incentives to accelerate business incubation and growth

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DRDs: Territory



- Not more than 10 acres
 - Must have continuous boundary (i.e., contiguous properties only)
 - Must include at least one historic building that is being or will be rehabilitated
 - “Historic building” has specific definition in state historic tax credit statute
 - Cannot be residential-only or include areas already exempted from taxation under existing TIF

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DRDs: Establishment



- Notice by first class mail to owners of property within proposed district
 - Public hearing no sooner than 30 days after notice
 - Created by ordinance of municipal corporation no sooner than 30 days after public hearing
 - Ordinance must:
 - Specify term and amount of exemption and area
 - Include economic development plan for DRD, which outlines goals, explains collaboration among municipality, businesses and property owners, and plan for using revenue including infrastructure

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DRDs: Establishment (cont.)



- No school district approval is needed if term is 10 years or less
 - Must provide notice to school district and JVS 14 days before adopting ordinance (unless school district has waived right to notice)
- Term can last up to 30 years, if obtaining school district approval (identical to TIF process)
 - Notify school district and JVS 45 business days before adopting ordinance
 - Receive any approval 14 days before adopting ordinance

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DRDs: Establishment (cont.)



- Development Services Agency (DSA) requirements:
 - Must notify DSA Director within 15 days of adopting ordinance
 - Annually by March 31, municipality must provide written report to DSA regarding DRD

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DRDs: Service Payments



- Real Property Tax Exemption:
 - Exempt up to 70% of improvements within DRD from taxation
 - Entire amount from exempted improvements must be distributed to municipal DRD fund for use per plan
 - Can begin in year specified, when improvement value exceeds specified amount, or when specified improvements are complete
 - As with existing TIFs, revenue from certain levies (e.g., MRDD, children's services) not affected by DRD

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DRDs: Additional Funding



- Redevelopment charge may also be collected
 - Requires consent of property owner
 - Also deposited into Municipal DRD Fund
 - Can be fixed dollar amount or amount determined based on formula (e.g. based on valuation or receipts of business)
 - Can be passed through to lessees
 - Agreement with property owner is covenant running with the land (i.e., transfers to subsequent property owners); must be disclosed in sales contracts
 - Unpaid amounts can be certified to county auditor for collection

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DRDs: Use of Revenue



- Broader use of funds allowed (versus TIFs)
- Can offer loans or grants to owners of historic buildings within DRD for rehabilitation or repair; must include plan for tracking award and progress of project
- Up to 20% can be dedicated to contributions to community improvement corporations, special improvement districts, or non-profit that promotes historic redevelopment. CICs or SIDs must use funds to promote the DRD.
- Can also use for public infrastructure authorized in ordinance (continued)

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DRDs: Use of Revenue (cont.)



- To finance public infrastructure improvements within DRDs, must provide description of how development will place new demands on infrastructure (must be specified in economic development plan)
- Funds cannot be used for police or fire equipment
- Notes or bonds are not subject to R.C. Chapter 133 (not considered to be general obligation bonds or bond anticipation notes; don't count toward statutory debt limits)

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Innovation Districts



- May be designated by ordinance of the municipality
 - Must be within existing or proposed DRD
 - Must have continuous boundary
 - Must have high-speed broadband network with ability to download at least 100 gigabits per second
- Purpose
 - To attract and grow tech businesses and support economic development by incubators and accelerators
 - Ordinance must include separate economic development plan for the Innovation District

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Innovation Districts



➤ Funding Authority

- DRD revenue can be used to offer loans or grants to incubators or accelerators within ID with condition that it must be used for businesses within ID; must include monitoring and tracking provisions

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Summary



- Am. Sub. H.B. 233 provides several useful tools that communities can use to boost redevelopment of historic neighborhoods
- Through DRDs and IDs, municipalities can provide loans and grants and can pay for infrastructure improvements necessary to revitalize Ohio's many historic urban areas
- DRDs and IDs also can be used to provide support for business attraction efforts and incubator/accelerator projects

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JEDDs

➤ Joint Economic Development District

- Contractual agreement among jurisdictions to create a new governmental entity charged with improving an identified district, typically in connection with an economic development initiative
- By statute, a special-purpose district formed to “facilitat[e] economic development to create or preserve jobs and employment opportunities and to improve the economic welfare of the people in the state and in the area of the contracting parties”

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Background: Historical Backdrop

- Historically, development has been challenging in unincorporated areas
 - Lack of municipal services and infrastructure
 - Townships resisting potential loss of identity, clout and revenue accompanying annexation
 - Limited public funds available to support development



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Background: Establishment of JEDD Tool

- Statutory compromise: JEDDs
- Enable district-wide income tax and the provision of municipal services to unincorporated areas
- Replace antagonism of annexation with collaborative spirit of cooperative agreement between municipality and township
- Typical scenario involves a township with prime development land and a municipality that is willing to offer services

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Roadmap: Overview of Process

- Agreement between contracting parties
- Public hearing and petition process
- Election required, but can be avoided
- Governed by Board of Directors
- Flexible powers set defined by contracting parties



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Roadmap: Territory

➤ Territory

- Can be formed by at least one municipality and one township, or more
- Contracting parties generally must be contiguous or one apart
- Territory cannot include residential property or property zoned for residential use (unless mixed-use)
- Territory cannot include property owned or leased by a municipal corporation or township unless the municipal corporation or township is either a party to the agreement or has consented to inclusion of the land within the JEDD

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Roadmap: Approval Process (1 of 2)

➤ Formation

1. Municipality and township (and other parties, if applicable) prepare a contract for the JEDD that includes an economic development plan and a map for the JEDD
2. Allow for public inspection of proposed JEDD documents
3. Public hearing regarding proposed JEDD
4. Obtain petition signatures of majority of owners of property within JEDD and majority of owners of businesses located within JEDD

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Roadmap: Approval Process (2 of 2)

➤ Formation (continued)

5. Legislation adopted by each contracting party
6. Notice to businesses and property owners that did not sign petition (10 days after approval)
7. Notify DSA
8. Effective 30 days after Township approval

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Roadmap: Election Requirement

➤ Election?

- Generally, the electors of any township that will be a contracting party to the JEDD must approve the creation of the JEDD.
- However, any included townships typically avoid an election by satisfying each of three conditions:
 - Unanimous approval of the township board of trustees
 - Petition signed by a majority of property owners within the JEDD
 - Land to be included in JEDD is zoned appropriately for proposed use
- JEDD subject to referendum (10% requirement, 30 days)

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Roadmap: Contract Provisions (1 of 2)

➤ Governance

- Board of Directors comprised of:
 - One person representing all municipalities that are contracting parties
 - One person representing all townships that are contracting parties
 - One person representing the owners of businesses located within the district
 - One person representing people working in the district
 - One person selected by the other members, who is the chairperson
- Election/selection determined by terms of contract

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Roadmap: Contract Provisions (2 of 2)

➤ Powers

- Coordination of services provided by municipality and township and any planned infrastructure improvements
- Can levy income tax at rate no higher than municipality's rate (no vote required)
- Can determine zoning and land-use regulations for district
- Can limit annexation within JEDD
- Can limit granting of property tax abatements and other tax incentives within JEDD

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Roadmap: Expansion Process

- 60-90 day process
- Term sheet between contracting parties
- Develop amendment, map
- Obtain petition signatures
- Public hearing process
- Legislative approvals
- Notice to property owners



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Hot Topics: Recent Developments



- Failed JEDZs – perceived overreaching by communities (e.g., failed Columbus Zoo JEDZ)
- H.B. 289 – sunset of JEDZs and new restrictions
- Op. Ohio Atty. Gen. No. 2015-002 – uniform taxation
- Use for school district compensation payments

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Hot Topics: Lessons Learned

- ✓ Communities considering a JEDD should ensure that its purpose will be collaborative economic development
- ✓ JEDDs can fail when they are merely a vehicle to generate income tax revenue

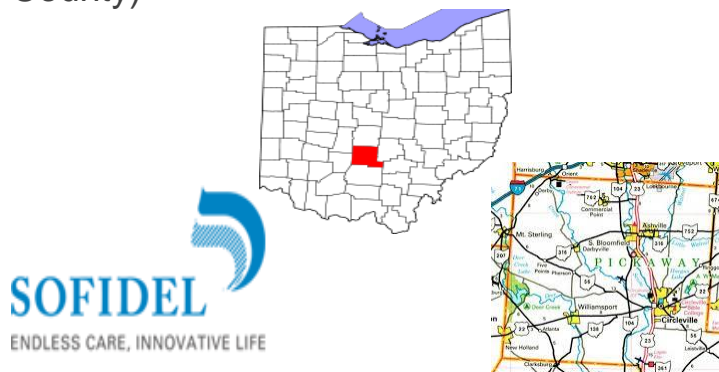
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Recent Examples

- Circleville and Pickaway Township (Pickaway County)



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Recent Examples

➤ Circleville-Pickaway Township JEDD

- Designed to support infrastructure needs of major new employer (Sofidel)
- Site did not offer adequate natural gas line service
- JEDD revenue used, in part, to pay debt service on JobsOhio loan benefitting project
- Other allocations of JEDD revenue directed to city, township, and school district, at varying rates during term of JEDD

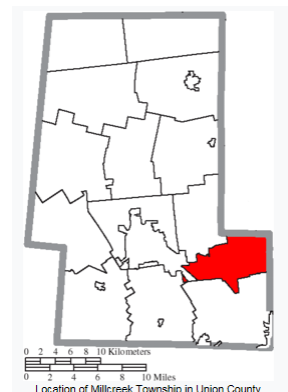
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Recent Examples

➤ Marysville and Millcreek Township (Union County)



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Recent Examples

- Marysville-Millcreek Township JEDD
 - Designed to support long-term growth
 - Will be established through framework of Cooperative Development Agreement
 - Participation will be required to receive municipal water and sewer
 - 55% of revenue allocated to infrastructure; 15% to City, 15% to Township, 10% to economic development marketing, 5% to costs

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Recent Examples: Village of Walton Hills and Sagamore Hills Township



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Recent Examples

➤ Village of Walton Hills and Sagamore Hills Township

- Local communities identified need for improved infrastructure and services to support Northcoast Behavioral Healthcare, a major local employer that had recently considered leaving Sagamore Hills Township
- JEDD established in July 2015 to generate income for purposes of improving primary road access to hospital site as well as fire and EMS services provided to site

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