TESTIMONY
Oct. 30, 2019

Tax & Budget

Testimony on SB 39 before the House Economic and Workforce Development Committee

Wendy Patton and Zach Schiller

Good morning Chairman Zeltwanger, Ranking Member Sobecki and members of the committee. My name is Wendy Patton and I am senior project director of Policy Matters Ohio, a nonprofit, nonpartisan organization with the mission of creating a more prosperous, equitable, sustainable and inclusive Ohio. Thank you for the opportunity to testify. We urge you to defer action on Senate Bill 39. The bill has numerous defects. It lacks needed guardrails. Provisions directed at making sure it is not a revenue loser are short on specifics and have no clawback mechanism, making them weak tea. If the projects it would support are so crucial, the General Assembly should fund them through the capital budget. The cost is uncertain, making its approval less than fiscally responsible. And it adds yet another new economic development tax credit when the Tax Expenditure Review Committee (TERC) has not yet undertaken a rigorous review of such tax expenditures. For all of these reasons, you should not approve this new credit.

News reports indicate that this legislation originated at least in part in connection with a downtown Cleveland development project. Since the origination of this bill in the General Assembly's last session, that project has been downscaled. While it still would appear to meet the terms of the credit, this underlines one flaw in the bill: While it requires *estimated* costs of the project to exceed $50 million, *final* costs need not. Though the amount of the credit may be reduced on a pro rata basis under the bill if such costs are lower than expected, this raises a question: Will all of these projects in fact be "transformational" as the bill makes out? Conversely, if actual development costs exceed the estimated development costs, the value of the credit is increased accordingly. So there would no cap on the credit for a project that spirals upward in value because of cost overruns or other factors.

We have no idea what the cost of this credit will be. The Legislative Service Commission in its fiscal note said the number of projects to be approved is undetermined. Each project could cost $5 million or more. It is feasible and necessary for the General Assembly to find out how many such projects have been started and completed across the state in recent years, as well as how many may be in progress. Lacking such an estimate, it is financially irresponsible to approve this new credit. At a minimum, the bill should include a cap on the total amount allowed to be awarded each year.

The Job Creation Tax Credit requires that for a company to receive a credit, the director of development services must determine that, "Receiving the tax credit is a major factor in the taxpayer's decision to go forward with the project." The bill now includes similar language, an improvement from some earlier versions. Criteria should be added as well so that such credits do not become an entitlement available for any mixed-use $50 million project. For instance, the $500 million expansion of Easton Town Center announced last year conceivably could meet the bill's requirements, including as it does offices, hotels, housing, entertainment and retail. Yet this project clearly did not need such an incentive—and should be excluded from it.

Under SB 39, the development director is to consider whether the area surrounding the "transformational" project will generate as much state and local tax revenue in five years as the cost of the credit. While this is a positive feature, the bill is short on specifics on how the increase in tax collections would be estimated, and lacks a definition of "surrounding area." The bill also is silent on how abatements of local property taxes, including tax increment financing, would be considered. These reduce the amount of taxes; how would local property taxes be figured in relation to abatements, which are a highly likely corollary to such projects? Omitting that from the bill leaves it subject to confusion about how the incremental revenue will be calculated, and is another reason that it is unwise to approve this bill as is.

Moreover, the bill lacks any payback requirements if the predicted state and local tax revenue do not materialize. Such clawbacks should be a part of any such legislation.

The bill allows transfer of the credits to insurance companies to in order to raise capital for the project. Such transfers can lower the value of the state subsidy in part because of fees paid to intermediaries like brokers and attorneys. The developer may end up with less than the state awarded, making this an expensive and inefficient subsidy. In addition, insurance companies that directly apply for credits must "invest, loan, or donate cash in exchange for an equity interest in an asset, a debt instrument, or no consideration." The sponsor should explain why a company should get a tax credit for making a loan.

The bill grants a large amount of discretion to the development services director in granting these credits. Beyond including at least one building that is 15 stories tall or a floor area of at least 350,000 square feet, the project must integrate "some combination of retail, office, residential, recreation, structured parking, and other similar uses into a mixed use development." That represents a wide range of uses. The director is to consider whether "the potential impact of the transformational mixed use development on the development site and the surrounding area in terms of architecture, accessibility to pedestrians, retail entertainment and dining sales, job creation, property values, connectivity and revenue from sales, income, lodging, and property taxes." Again, this leaves a lot up to the subjective opinion of the director. Yet the Senate has been trying to move away from allowing great executive authority. Senate President Obhof said last year there needs to be a "right-sizing" of the relationship between the legislative and the executive branch, noting that "for decades I think legislators have given up too much of their rightful responsibilities over the administrative agencies, or administrative agencies have tried to take more of the legislature's responsibility." Granting the development services director unilateral authority to determine eligibility for what could be significant new state spending does not appear to conform to that sentiment. If the General Assembly does move ahead with this credit, it should require legislative oversight.

More appropriately, you should defer action on this bill and instead consider any such projects for inclusion in the state's capital budget. That way, they would be considered along with other projects in competition for the state's scarce resources, instead of on a standalone basis. Whether as a tax credit reducing state revenue or as an appropriation, such projects represent a claim on the State of Ohio's financial resources.

This bill is one of many that have been introduced proposing new or expanded tax credits or exemptions. Yet the Tax Expenditure Review Committee (TERC) has yet to seriously tackle the job of examining the state's $9 billion-plus in annual tax breaks. That includes the eight business incentive tax credits that, according to the budget bill, will result in $283 million in claims in the current fiscal year and outstanding credits of more than $1.2 billion by the end of Fiscal Year 2021. In fact, members of the TERC for this session have not even been appointed. Before you adopt yet another new tax expenditure for economic development, the TERC should thoroughly examine these claims on the state's future revenue. Thank you very much for the opportunity to testify.