Policy Matters Ohio

TESTIMONY
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Tax & Budget

Testimony on HB 469 before the Senate Ways & Means Committee

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Good morning, Chairman Eklund, Ranking Member Williams and members of the committee. My name is Zach Schiller and I am research 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 House Bill 469. The bill has numerous defects. It lacks needed guardrails and transparency. Provisions directed at making sure it is not a revenue loser are short on specifics and have no clawback mechanism, making them weak tea. The bill does not meet statutory requirements, in that it does not include a statement of sponsor intent. 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 tax credit when the Tax Expenditure Review Committee (TERC) has not yet undertaken a rigorous review of tax credits in general or economic development tax expenditures in particular. 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. Yet the Cleveland Municipal School District, which was solicited to support the project through a deal that would have given the district funds upfront in exchange for long-term reductions in expected property tax, declined to do so. Various reasons were given for the rejection, including local property tax increases affecting some Cleveland homeowners that made such an arrangement unseemly. As you know, Ohio's key economic development tax incentive, the Job Creation Tax Credit, requires local support for any project receiving a credit. Yet for whatever the reasons, the local schools are not supporting a project that spurred this legislation. This undercuts the rationale for this credit.

While two bill supporters, in identical language, have claimed that "only a few such projects are likely to be eligible for the credit," we have no such certainty. In fact, you heard other testimony that within the Greater Akron region alone, "there are numerous projects that could potentially qualify." The Legislative Service Commission in its fiscal note said the number of projects to be approved is undetermined, and thus did not provide a numerical estimate for the total cost of the bill. 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 JCTC also 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." This bill should be strengthened so that it includes a similar provision – and it is clear that but for the credit, the project would not go forward. 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 recently announced $500 million expansion of Easton Town Center 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.

This bill also does not comport with statutory requirements because it does not include a statement of sponsor intent. Under House Bill 9, unanimously approved during the 131st General Assembly, "Any bill introduced in the house of representatives or the senate that proposes to enact or modify one or more tax expenditures should include a statement explaining the objectives of the tax expenditure or its modification and the sponsor's intent in proposing the tax expenditure or its modification."

HB 469 was improved in its substitute form so that the development director is to consider whether the area of 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, it is not a requirement—nor are there any specifics included on how the increase in tax collections would be estimated. And the bill 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 rush this bill through 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. Nor is it clearly spelled out what information will be publicly available about these credits. Will purchases of the certificates be publicly disclosed, so that Ohio taxpayers and legislators see who the ultimate users of the credit are? And will the public be able to see, as it should, the basis upon which such credits are awarded, including the required third-party cost certification by a certified public accountant of the actual development costs attributed to the project? Such guardrails and transparency requirements are needed on tax incentives in general and this one in particular.

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 be "a mixed use development that integrates some combination of retail, office, residential, recreation, structured parking, and other similar uses." That represents a wide range of uses. Along with increased tax collections, the director is to consider whether "the potential impact of the transformational mixed use development on the project 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 recently 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.

During this session, the General Assembly has approved new tax expenditures including a rural business growth credit, a sales-tax exemption for eyeglasses, an expanded business income deduction for compensation paid by professional employer organizations, a retroactive sales-tax exemption of certain property used in oil and gas production, a permanent sales-tax holiday, a sales-tax exemption for songs downloaded from a commercial digital jukebox and a kilowatt hour tax break on electricity used in chlor-alkali production. Until this session, there was only one tax expenditure allowed exclusively for insurance taxes; if this bill passes, there will be three (other tax expenditures also allow insurance companies and others to make use of them). Before you adopt yet another new tax expenditure, the TERC should thoroughly examine a significant portion of the $9 billion in annual tax expenditures the state has on the books. Thank you very much for the opportunity to testify.