



## JEDDs remain a flexible, powerful tool for promoting development

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Thanks to the booming economy, many Ohio communities are once again creating joint economic development districts (JEDDs) to promote economic growth. This longstanding economic development tool remains one of the most flexible and powerful devices for local governments to encourage growth. Municipalities and townships considering the use of a JEDD should consider, however, several recent legal developments that refine when and how JEDDs may be utilized.

### *JEDD overview*

JEDDs are special purpose districts that are created by a contract between a combination of municipal corporations and townships. Under Ohio law, one or more municipal corporations and one or more townships may enter into a contract to create a JEDD for the purpose of facilitating economic development. To that end, JEDDs allow for the levying of a district-wide income tax and the provision of municipal services in unincorporated areas.

Except in limited circumstances, each contracting party must be contiguous to at least one other contracting party. In addition, the territory included in the JEDD must meet statutory requirements, including that it be within the territory of one or more of the contracting parties and that it may not include existing residential areas or areas zoned for residential use (unless it is part of a mixed-use development).

### *Procedure for creation of a JEDD*

To create a JEDD, the contracting parties must first allow for public inspection of the contract and the economic development plan for the JEDD, which consists of a schedule of the new, expanded or additional services, facilities or improvements to be provided

and a schedule for the collection of any income tax to be levied within the JEDD. They must also provide for public review a description of the area to be included within the JEDD, including a map. Next, a public hearing must be held to facilitate public discussion of the contract and the JEDD. Each contracting party must then adopt legislation approving the contract. Finally, the contract must be executed.

Within ten days after the legislation approval process is complete, the parties must notify any business owner or property owner within the proposed JEDD district that did not sign the petition to form the JEDD.

Next, the board of township trustees must determine whether to submit the question of creating the JEDD to voters within the township. Most decide against seeking voter approval. The township trustees may determine *not* to submit the question of the creation of the JEDD to the voters within the township only if:

- The resolution approving the JEDD is passed by the township's board of trustees through a unanimous vote;
- A majority of the property owners within the proposed JEDD file a petition for the JEDD's creation; and
- Appropriate zoning is already in place in the JEDD area.

If the board of township trustees does not submit the JEDD for voter approval, the township resolution approving the JEDD may be subject to a referendum if requested by a petition signed by ten percent of township voters. Any such petition must be filed within 30 days of the township resolution.

### ***Governance of a JEDD***

JEDDs are governed by a distinctive board structure that reflects their role in promoting cooperative efforts by local government and businesses developing property. The parties set by contract the method for appointing board members. Generally, however, assuming businesses operate within a JEDD, the JEDD is governed by a board of directors comprised of: (a) one person representing all municipalities that are contracting parties, (b) one person representing all townships that are contracting parties, (c) one person representing the owners of businesses located within the JEDD, (d) one person representing all persons working within the JEDD and (e) one person selected by the four people previously selected (who shall serve as chairperson). If no businesses operate in the JEDD when it is formed, the statute calls for a smaller board.

### ***Powers of a JEDD***

The powers of JEDDs are flexible under Ohio law and include:

- The power to levy an income tax within the JEDD at a rate not higher than the highest rate being levied by a municipality that is a contracting party, with an amount being set aside for the long-term maintenance of the JEDD.
- The power to determine the substance and administration of zoning and other land-use regulations, building codes, permanent public improvements, and other regulatory and proprietary matters determined to be for a public purpose.
- The power to limit and control annexation of unincorporated territory within the JEDD.
- The power to limit the granting of property tax abatements and other tax incentives within the JEDD.

In addition, JEDDs have all other powers that are described in the contract. But, since a JEDD is a creature of statute, it can have only such powers as are specifically granted by statute. Thus, except for the powers described above, a JEDD can have no more power than an individual municipality or township would have. Ohio law specifically provides that the powers granted to a JEDD "are in addition to and not in derogation of all other powers granted to municipal corporations and townships pursuant to law." In other words, creating a JEDD cannot cause a contracting party to lose other powers.

Finally, if two or more contracting parties have previously entered into a separate contract for utility services, then amendment, renewal or termination of the separate contract for utility services may *not* constitute any part of the consideration for the contract. A contract is presumed to violate the above-described requirement if it is entered into within two years prior or five years after the amendment, renewal or termination of a separate contract for utility services that two or more contracting parties have previously entered into.

## *Hot topics*

JEDDs have been in the news quite a bit in recent years, with a number of new requirements generally designed to ensure that JEDDs are established for the purpose of promoting economic development. Recent legal developments include the following:

- [Sub. House Bill 289](#) (130th General Assembly) eliminated the authority to establish new joint economic development zones (JEDZs), which were similar to JEDDs. In addition, the legislation significantly limited the ability of communities to modify existing JEDZs.
- [Sub. House Bill 182](#) (131st General Assembly) recodified and rewrote much of the JEDD statute. Among other things, this legislation added authority to include mixed-use developments in a JEDD. It also created a new opt-out procedure for business owners that do not sign the petition seeking to form the JEDD. This procedure involves getting an independent court review of how JEDD income tax revenue is used to benefit the applicable business owner.
- [Op. Ohio Atty. Gen. No. 2015-002](#), a legal opinion offered by the Ohio Attorney General, determined that a JEDD must tax employees and businesses within the JEDD on the same basis. In other words, a JEDD cannot tax only the employees within its territory.
- [Ohio Administrative Code Section 5703-41-02](#) announced on January 12, 2018, requires new reporting to the tax commissioner regarding JEDDs.

These developments should not interfere with a community's ability to successfully establish a JEDD, so long as the JEDD is designed to promote collaborative economic development.

## *Success stories*

The flexibility and power of JEDDs make them useful for many different kinds of projects. In recent years, for example, we have seen JEDDs employed in the following settings:

- [To encourage responsible growth in a rapidly-developing community](#). A partnership was formed between a municipality and surrounding townships providing for one or more JEDDs to be established throughout the townships as they grow, with the municipality providing water and sewer, the township providing safety services, and both parties cooperating to provide a higher level of infrastructure and services to a rapidly developing part of the state.
- [To retain an important local employer](#). A municipality and a township, determined to prevent a threatened relocation of a large employer, established a JEDD to provide infrastructure improvements and more dedicated services in order to secure important community jobs.
- [To attract a new, large employer](#). A local economic development agency, in cooperation with the county, municipality and township, established a JEDD in order to provide revenue to pay debt service on a large loan used to pay the cost of significant utility expansions.

## *Conclusion*

The sky is the limit for local governments seeking to use JEDDs to support and promote growth. It is very important, however, for municipalities and townships to be mindful of recent legal updates — and to make sure JEDDs are focused on economic development — in order to establish and maintain a successful JEDD.

# Authors

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**Robert F. McCarthy**

*Partner*

Columbus

614.227.2308

[rmccarthy@bricker.com](mailto:rmccarthy@bricker.com)

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