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ACT SUMMARY

Bonds

- Establishes procedures for the issuance of revenue bonds for brownfield revitalization purposes and general obligations (i.e. bonds) of the state for conservation purposes.
- Establishes a \$200 million maximum principal amount each of the revenue bonds and the general obligation bonds to be issued.
- Designates the Treasurer of State as the issuing authority for the revenue bonds and the Ohio Public Facilities Commission as the issuing authority for the general obligation bonds.
- Requires the proceeds of the sale of revenue bonds to be deposited in the Clean Ohio Revitalization Fund and used for grants for brownfield remediation and cleanup, and requires 20% of the net proceeds annually

to be used for assessments, cleanup or remediation of brownfields, and public health projects that are located in eligible areas (see below).

- Requires the proceeds of general obligation bonds to be deposited as follows: 75% to the Clean Ohio Conservation Fund for natural resources and parks and recreation grants, 12.5% to the Clean Ohio Trail Fund for recreational trail grants, and 12.5% to the Clean Ohio Agricultural Easement Fund for certain farmland preservation purposes.
- Make appropriations.

Brownfield revitalization grant and loan program

- Creates the Clean Ohio Revitalization Fund to be administered by the Department of Development for the purpose of distributing grant or loan moneys for brownfield cleanup or remediation projects.
- Authorizes 15% of the annual allocation of money to the Clean Ohio Revitalization Fund to be used for loans, requires the Director of Development to establish policies and requirements governing loans, and prohibits loans for assessments, cleanup or remediation of brownfields, or public health projects for projects located in eligible areas, which must be funded solely with grants (see below).
- Establishes a maximum grant or loan percentage of 75% of the project's total estimated cost, and requires the applicant to provide, at a minimum, a 25% matching share of the project's total estimated cost.
- Establishes a \$3 million maximum grant or loan amount to any one project.
- Creates the Clean Ohio Council to review applications for and award grants and make loans under the brownfield revitalization grant and loan program.
- Requires grant or loan applicants to submit applications to local integrating committees established under the Ohio Public Works Commission Law or, if required, the executive committees of integrating committees, requires the committees or executive committees to prioritize and choose not more than six applications annually and forward them to the Council, and requires the Council to review and approve or

disapprove the applications using a selection process established in policies and requirements established by the Director of Development.

- Requires the authorized representative of an applicant to sign and submit an affidavit with an application certifying that the applicant did not cause or contribute to the release of hazardous substances or petroleum at the property that is the subject of the application, and makes knowing submission of a false affidavit a felony.
- Requires recipients of grants or loans to enter into agreements with the Clean Ohio Council, and establishes requirements for those agreements.
- Except under specified circumstances, requires a grant recipient to employ a certified professional to determine if the brownfield cleanup or remediation complies with applicable cleanup standards, and requires the certified professional to issue a no further action letter in accordance with requirements of the Voluntary Action Program Law upon determining that it is in compliance.
- Authorizes an applicant to pursue a covenant not to sue in accordance with the Voluntary Action Program Law, requires the Director of Environmental Protection to issue or deny a covenant not to sue if one is so requested, and, if an applicant does not pursue a covenant not to sue, requires the Director to determine if a cleanup or remediation complies with applicable cleanup standards and send a written report of that determination to the Clean Ohio Council.
- Applies the Voluntary Action Program Law to the brownfield provisions except as otherwise specifically provided in those provisions.
- Establishes filing requirements in county property records for completed and approved brownfield cleanup or remediation projects.
- Requires 20% of the proceeds of the net obligations deposited in the Clean Ohio Revitalization Fund to be devoted for grants for assessments, brownfield cleanups or remediations, and certain public health projects for property in certain eligible areas of the state that are economically distressed and meet other economic criteria, and requires those grants to be administered by the Director of Development.

- Establishes a \$25 million maximum grant amount for public health projects in eligible areas.
- Requires the Director of Development to establish policies and requirements establishing an application form for grants, a selection process for prioritizing brownfield cleanup or remediation projects, a brownfield post-cleanup or remediation oversight program, criteria for awarding grants to applicants in eligible areas that includes a selection process for public health projects, and any other procedures and requirements that are necessary to administer the program.
- Establishes immunity for an applicant from civil actions and from orders of the Director of Environmental Protection when the applicant did not cause the release of the hazardous substances or petroleum at the property and the applicant conducts the cleanup or remediation in compliance with the agreement entered into with the Clean Ohio Council and with all applicable environmental laws.

Natural resources and parks and recreation grant program

- Establishes the Clean Ohio Conservation Fund for the purpose of distributing grants to local political subdivisions and nonprofit organizations for natural resources and parks and recreation projects.
- Establishes a framework for the distribution of moneys from the Fund that utilizes the existing framework of the Ohio Public Works Commission and district public works integrating committees, and adds the Director of Natural Resources as an ex officio member of the Ohio Public Works Commission.
- Requires money in the Fund to be distributed within each district under that framework on a modified per capita basis.
- Requires each district public works integrating committee to appoint a natural resources assistance council to review and approve or disapprove eligible projects for funding from the Fund.
- Establishes the types of projects that may be funded with moneys from the Fund.

- Requires a political subdivision or nonprofit organization that is seeking funding for a project to submit an application and other information to the natural resources assistance council with jurisdiction over the project.
- Requires entities that propose projects for funding to provide at least 25% of the total cost of the project as matching funds.
- Establishes criteria for a natural resources assistance council to apply when approving or disapproving projects for grant funding.
- Grants final approval or disapproval authority for projects funded by the Clean Ohio Conservation Fund to the Ohio Public Works Commission.

Recreational trails grant program

- Establishes the Clean Ohio Trail Fund for the purpose of distributing grants to local political subdivisions and nonprofit organizations for recreational trails.
- Specifies that a matching grant that is made by the Director of Natural Resources to a political subdivision or a nonprofit organization for the purchase of land or interests in land for recreational trails and that consists of moneys from the Clean Ohio Trail Fund may provide up to 75% of the cost of the project.
- Requires applicants that propose projects for funding to provide at least 25% of the total cost of the project as matching funds.
- Requires the Director to adopt policies that establish procedures for providing matching grants, eligibility criteria for receiving a matching grant, and other requirements.
- Creates the Clean Ohio Trail Advisory Board to advise the Director regarding the selection of applications for grants under the recreational trails grant program.

Farmland preservation

- Establishes the Clean Ohio Agricultural Easement Fund for the purpose of distributing grants to local political subdivisions and charitable organizations for farmland preservation purposes.

- Requires the term of an agricultural easement purchased with money from the Clean Ohio Agricultural Easement Fund to be perpetual and to run with the land.
- Specifies that a matching grant that is made by the Director of Agriculture to a local government or charitable organization for the purchase of an agricultural easement and that consists of moneys from the Clean Ohio Agricultural Easement Fund may provide up to 75% of the value of the agricultural easement, and specifies that the amount of such a matching grant used for the purchase of a single agricultural easement cannot exceed \$1 million.
- Requires the Director to adopt rules that establish procedures, criteria, and other requirements governing the purchase of agricultural easements with matching grants that consist of money from the Clean Ohio Agricultural Easement Fund.
- Requires a recipient of a matching grant that consists of money from the Clean Ohio Agricultural Easement Fund to monitor and, if necessary, to enforce the agricultural easement that was purchased with the matching grant, and requires the recipient to submit an annual monitoring report to the Office of Farmland Preservation in the Department of Agriculture.
- Allows the purchase of agricultural easements with installment payments.
- Authorizes the purchase of agricultural easements on homesteads.
- Creates the Farmland Preservation Advisory Board to advise the Director regarding the design and implementation of an agricultural easement purchase program, the selection of applications for the purchase of agricultural easements with matching grants from the Clean Ohio Agricultural Easement Fund, and the design and implementation of any other statewide farmland protection measures that the Director considers appropriate.

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CONTENT AND OPERATION

Introduction

Article VIII of the Ohio Constitution provides that no debt can be created by or on behalf of the state except as otherwise specifically provided in that Article. A number of amendments to Article VIII have been approved by the electors over the years that allow the state to incur debt. For example, Section 2n of Article VIII authorizes general obligations in amounts determined by the General Assembly for facilities for common schools and state-supported and state-assisted institutions of higher education, and Section 2m authorizes a total of up to \$1.2 billion of general obligations outstanding at any one time for highways.

In November 2000, Issue 1 was put before the voters of Ohio and was approved by a majority of those voters. Issue 1 amended the Ohio Constitution by enacting Section 2o of Article VIII. Section 2o authorizes the General Assembly to provide by law for the issuance of bonds and other obligations of the state for paying costs of projects implementing certain conservation and revitalization purposes (see **COMMENT**).

The act authorizes the issuance of those bonds and establishes procedures for their issuance. In addition, the act establishes requirements for the distribution of the proceeds from the sale of those bonds. Essentially, the act establishes four programs for the distribution of those moneys. First, the act establishes a program for the redevelopment of brownfields to be funded from moneys generated from the issuance of revenue bonds. The brownfields program and the distribution of grant moneys under that program are governed under the act by the Clean Ohio Council, which is created by the act, with requirements and procedures for the program being established by the Director of Development. The Council consists of members of state government agencies, members of the General Assembly, and other parties designated by the act.

The second program is a program for the distribution of grants for natural resources and parks and recreation projects funded by the proceeds of general obligation bonds issued under the act. The existing Ohio Public Works Commission is given general oversight over the natural resources and parks and recreation grant program. The program utilizes the framework of the Ohio Public Works Commission Law for the purpose of determining which projects should be funded. Each of the 19 district public works integrating committees must appoint a natural resources assistance council for the purpose of reviewing and approving eligible projects. After doing so, a council must forward the projects to the Ohio Public Works Commission, which has the final approval authority over proposed

grants for projects. Grants are distributed under the program on a modified per capita basis to each district of the state represented by an integrating committee.

The third program created by the act is a program for the distribution of grants for recreational trails projects funded by the proceeds of general obligation bonds issued under the act. Specifically, 12.5% of the money generated from the sale of those bonds will be used for recreational trails. The act requires the Director of Natural Resources to establish policies that establish a grant program for the purchase of land for recreational trails. It creates the Clean Ohio Trail Advisory Board to advise the Director concerning the selection of applications to receive grants under the program.

The fourth program addressed by the act is farmland preservation. The act requires that proceeds of general obligation bonds also be used to fund the farmland preservation component of the act. Specifically, 12.5% of the money generated from the sale of general obligation bonds will be used for farmland preservation purposes. The act requires the Director of Agriculture to adopt rules that establish a grant program for the purchase of agricultural easements with the money. A Farmland Preservation Advisory Board created by the act is required to advise the Director regarding the design and implementation of the program and of other farmland protection measures and the selection of applications to receive matching grants for the purchase of easements under the program.

Bonds

Revenue bonds for revitalization purposes

The act grants the Treasurer of State the authority to issue revenue bonds for certain revitalization purposes related to brownfield redevelopment (sec. 151.40). Obligations issued for revitalization purposes *are not* general obligations of the state, and the full faith and credit, revenue, and taxing power of the state *are not* pledged to the payment of debt service on them. The debt service on the revenue bonds authorized under the act is required to be paid from the net proceeds from pledged liquor profits; money accruing to the state from the lease, sale, or other disposition or use of revitalization projects or from the repayment, including any interest, of loans or advances made from net proceeds; accrued interest received from the sale of obligations; income from the investment of special funds; any gifts, grants, donations, or pledges, and receipts therefrom, available for the payment of debt service; and additional or any other specific revenues or receipts lawfully available to be pledged, and pledged, pursuant to further authorization by the General Assembly, to the payment of debt service (sec. 151.40(A)(6) and (F)). The net proceeds of the revenue bonds must be deposited in the Clean Ohio Revitalization Fund upon certification from the Clean Ohio Council of the amount of moneys needed (see **'Brownfield revitalization**

grant and loan program," below). Not more than \$200 million principal amount of revitalization obligations may be issued, and not more than \$50 million principal amount may be issued in any fiscal year. However, the \$50 million limit may be exceeded in any fiscal year by the principal amount of obligations that in any prior fiscal year could have been, but were not issued within the \$50 million limit (sec. 151.40(B) and Article VIII, § 2o, Ohio Constitution, not in the act). The act enacts standard procedures for the issuance of the revenue bonds, applies other procedures in continuing law to their issuance, and specifies that the Treasurer of State is authorized to sell the bonds at either a public or private sale (secs. 151.01 and 151.40).

General obligations for conservation purposes

The act grants the Ohio Public Facilities Commission the authority to issue general obligations of the state for the purposes of paying for the costs of certain conservation-related projects (secs. 151.01(A)(7) and 151.09). Not more than \$200 million principal amount of general obligations may be issued, and not more than \$50 million principal amount may be issued in any fiscal year. However, the \$50 million limit may be exceeded in any fiscal year by the principal amount of obligations that in any prior fiscal year could have been, but were not issued within the \$50 million limit (sec. 151.09(B)(1) and Article VIII, § 2o, Ohio Constitution, not in the act).

The act requires the Ohio Public Facilities Commission, upon the certification by the Ohio Public Works Commission, to issue obligations required for the purposes of the following funds that are created by the act: the Clean Ohio Conservation Fund, the Clean Ohio Trail Fund, and the Clean Ohio Agricultural Easement Fund (see "**Natural resources and parks and recreation grant program,**" "**Recreational trails grant program,**" and "**Farmland preservation,**" below). In making the certification, the Ohio Public Works Commission must consult with the Department of Agriculture and the Department of Natural Resources. The Commission must certify amounts that correspond to the distribution of the net proceeds of obligations, which must be deposited as follows: 75% into the Clean Ohio Conservation Fund, 12.5% into the Clean Ohio Agricultural Easement Fund, and 12.5% into the Clean Ohio Trail Fund. (Sec. 151.09(B) and (C).)

The net proceeds of obligations must be deposited in the funds discussed above to pay the costs of conservation projects, which include related direct administrative expenses and allocable portions of the direct costs of such projects of the Department of Agriculture, the Department of Natural Resources, or the Ohio Public Works Commission and participating local government entities (see "**Natural resources and parks and recreation grant program,**" "**Recreational trails grant program,**" and "**Farmland preservation,**" below) (sec. 151.09(A) and

(C)). The Ohio Public Facilities Commission is authorized to sell the obligations at either a public or private sale (sec. 151.01(H)). Procedures for the issuance of general obligations are established in continuing law, and the act applies those procedures to the issuance of obligations under the act (sec. 151.01). The state's full faith and credit, revenue, and taxing power are pledged to the timely payment of debt service on those obligations (sec. 151.01(M)).

Brownfield revitalization grant and loan program

Introduction

As discussed above, the Ohio Constitution authorizes the sale of revenue bonds to finance certain brownfield revitalization projects, including cleanup or remediation of contamination on publicly and privately owned lands. To achieve that purpose, the act establishes the Clean Ohio Revitalization Fund to provide grants and loans for those projects and to provide funding to the Clean Ohio Council, which the act creates, for the purpose of administering the grant and loan program. In general, the Director of Development is required to establish policies and requirements governing the program. All grant and loan applications are required to be submitted to local public works integrating committees for prioritization before being forwarded to the Clean Ohio Council, which awards the grants and loans. The act defines "brownfield" as an abandoned, idled, or under-used industrial or commercial property where expansion or redevelopment is complicated by known or potential releases of hazardous substances or petroleum.¹ (Sec. 122.65(D).) "Cleanup or remediation" is defined by the act to mean any action to contain, remove, or dispose of hazardous substances or petroleum at a brownfield. "Cleanup or remediation" includes the acquisition of a brownfield, demolition performed at a brownfield, and the installation or upgrade of the minimum amount of infrastructure that is necessary to make a brownfield operational for economic development activity. (Sec. 122.65(F).)

Clean Ohio Revitalization Fund and matching grant and loan requirements

The act creates the Clean Ohio Revitalization Fund in the state treasury. The Fund consists of moneys credited to it from revenue bonds that are issued to pay the costs of brownfield remediation projects and of payments of principal and interest on loans that are made from the Fund under the act. Money in the Fund

¹ "Property" is defined to mean any parcel of real property, or portion of such a parcel, and any improvements to it (sec. 122.65(O)). "Hazardous substances," "petroleum," and "release" have the same meanings as in the Voluntary Action Program Law (secs. 122.65(E) and 3746.01, not in the act).

must be used to make grants or loans for projects that have been approved by the Clean Ohio Council in accordance with the act's provisions, except that the Council annually must devote 20% of the net proceeds of obligations deposited in the Clean Ohio Revitalization Fund for certain types of projects in eligible areas (see below). In addition, money in the Fund may be used to pay reasonable costs incurred by the Department of Development and the Environmental Protection Agency in administering the brownfield provisions of the act. All investment earnings of the Fund must be credited to it. For two years after the effective date of the act, investment earnings credited to the Fund may be used to pay the costs incurred by the Department of Development and the Environmental Protection Agency under the brownfields component of the act. The Department of Development is required to administer the Clean Ohio Revitalization Fund in accordance with the act, policies and requirements established under the act, and the terms of the agreements entered into by the Council with grant and loan recipients (see below). (Sec. 122.658(A).)

Grants and loans for projects awarded by the Clean Ohio Council cannot provide more than 75% of the estimated total cost of a project. In addition, a grant or loan to any one project cannot exceed \$3 million. The act requires an applicant for funding to provide at least 25% of the estimated total cost of a project. The applicant's share may consist of one or a combination of any of the following:

- (1) Payment of the cost of acquiring the property for the purposes of the act;
- (2) Payment of the reasonable cost of an assessment at the property (see below);
- (3) The reasonable value, as determined by the Council, of labor and materials that will be contributed by the applicant in performing the cleanup or remediation;
- (4) Moneys received by the applicant in any form for use in performing the cleanup or remediation; and
- (5) Loans secured by the applicant for the purpose of the cleanup or remediation of the brownfield. (Sec. 122.658(B).)

Costs that were incurred more than two years prior to the submission of an application to the Clean Ohio Council for the acquisition of property, assessments, and labor and materials cannot be used as part of the applicant's matching share. The Governor vetoed a provision that would have prohibited state money from being used as part of the applicant's matching share, except that under that

provision grants awarded by the Governor's Office of Appalachian Ohio could have been used as a matching share. (Sec. 122.658(B).)

The act precludes the Department of Development from making any payment to an applicant from the Fund to pay any of the applicant's costs that were not included in the grant or loan application or that exceed the amount of the estimated total costs of the project included in the application. If, upon completion of the project, the costs are less than the amounts included in the application, the amounts so included less the amounts of the actual project costs must be credited to the Fund. However, the amounts credited must be equivalent in percentage to the percentage of the project costs that were to be funded by the grant or loan. (Sec. 122.658(C).)

In addition, grants awarded or loans made from the Clean Ohio Revitalization Fund must be used by an applicant only to pay the costs of the actual cleanup or remediation of a brownfield and must not be used by an applicant to pay any administrative costs incurred by the applicant. Costs related to the use of a certified professional (see below) are not administrative costs and may be paid with moneys from grants or loans from the Fund. (Sec. 122.658(D).) The Director of Development is required to establish policies and requirements delineating what constitutes administrative costs (sec. 122.657(G)).

For purposes of making loans and loan agreements, the Director of Development is required to establish policies and requirements that include at least all of the following: (1) not more than 15% of the money annually allocated to the Clean Ohio Revitalization Fund can be used for loans, (2) the loans must be made at or below market rates of interest, including, without limitation, interest-free loans, (3) the recipient of a loan must identify a source of security and a source of repayment of the loan, (4) all payments of principal and interest on a loan must be deposited in the state treasury and credited to the Clean Ohio Revitalization Fund, and (5) the Clean Ohio Council may accept notes and other forms of obligation to evidence indebtedness, accept mortgages, liens, pledges, assignments, and other security interests to secure such indebtedness, and take any actions that are considered by the Council to be appropriate to protect such security and safeguard against losses, including, without limitation, foreclosure and bidding on the purchase of property upon foreclosure or other sale (sec. 122.657(H)).

Clean Ohio Operating Fund

The act creates the Clean Ohio Operating Fund to be used to pay the costs incurred by the Director of Environmental Protection under the brownfield component of the act. The act provides that notwithstanding the Voluntary Action Program Law, upon the request of the Director, the Director of Development must certify to the Director of Budget and Management the amount of excess

investment earnings that are available to be transferred from the Clean Ohio Revitalization Fund to the Clean Ohio Operating Fund. Upon certification, the Director of Budget and Management may transfer from the Clean Ohio Revitalization Fund to the Clean Ohio Operating Fund an amount not exceeding the amount of the annual appropriation to the latter Fund. Investment earnings of the Clean Ohio Operating Fund must be credited to it. For two years after the effective date of the act, investment earnings credited to the Fund may be used to pay administrative costs incurred by the Director of Environmental Protection under the brownfield component of the act. (Sec. 3745.40.)

Clean Ohio Council

The act creates the Clean Ohio Council for the purposes of accepting and reviewing applications for grants and loans from the Clean Ohio Revitalization Fund and awarding the grants and loans. The Council consists of the Director of Development or the Director's designee; the Director of Environmental Protection or the Director's designee; the Director of the Ohio Public Works Commission as a nonvoting, ex officio member; two members of the Senate appointed by the President of the Senate, one of whom represents the majority party and one the minority party; two members of the House of Representatives appointed by the Speaker of the House, one of whom represents the majority party and one the minority party; and the following seven members appointed by the Governor:

- (1) One representing the interests of counties;
 - (2) One representing the interests of townships;
 - (3) One representing the interests of municipal corporations;
 - (4) Two representing the interests of business and development; and
 - (5) Two representing statewide environmental advocacy organizations.
- (Sec. 122.651(A).)

The Governor's appointments must represent all areas of the state and must reflect the demographic and economic diversity of the population of the state. The act requires all appointments to the Council to be made not later than 120 days after the effective date of the act. (Sec. 122.651(A).)

The act provides that members appointed by the President of the Senate and the Speaker of the House of Representatives serve at the pleasure of their respective appointing authorities. With respect to the members appointed by the Governor, the act establishes staggered two-year terms. The act also enacts standard procedures related to vacancies and removal of members. (Sec. 122.651(B).)

The act requires the Director of Development to serve as chairperson of the Clean Ohio Council. The Council must annually select from its members a vice-chairperson and a secretary to keep a record of its proceedings. A majority vote of a quorum of the members of the Council is necessary to take action on any matter. The Council may adopt bylaws that establish the frequency of meetings, procedures for reviewing eligible projects under the act's provisions, and other necessary procedures. (Sec. 122.651(C).)

Serving as a member of the Council does not constitute holding a public office or position of employment under Ohio law and does not constitute grounds for removal of public officers or employees from their offices or positions of employment. Members of the Council must serve without compensation for attending Council meetings. (Sec. 122.651(D).) In addition, members appointed by the Governor cannot have a conflict of interest with the position. For the purposes of the act, "conflict of interest" means the taking of any action that violates any provision of the Ethics Law or the Offenses Against Justice and Public Administration Law. (Sec. 122.651(E).)²

The act requires the Department of Development to provide office space for the Council. In addition, the staffs of the Department of Development and the Environmental Protection Agency must assist the Council in its duties. (Sec. 122.651(F).) Finally, the act provides that the Sunset Law does not apply to the Council (sec. 122.651(G)).

Applications for brownfield grants or loans and public participation

An applicant seeking a grant or loan for a brownfield cleanup or remediation project from the Clean Ohio Revitalization Fund must apply for the grant or loan in accordance with the act's provisions. The act defines "applicant" to mean a county, township, municipal corporation, port authority, or conservancy district or a park district, other similar park authority, nonprofit organization, or organization for profit that has entered into an agreement with a county, township, municipal corporation, port authority, or conservancy district to work in conjunction with that county, township, municipal corporation, port authority, or conservancy district for the act's purposes (sec. 122.65(B)).³

² R.C. Chapter 102. and R.C. Chapter 2921., respectively.

³ For purposes of the brownfield revitalization program, "nonprofit organization" is defined by the act to mean a corporation, association, group, institution, society, or other organization that is exempt from federal income taxation under applicable provisions of the Internal Revenue Code (sec. 122.65(N)).

In order to apply for a grant or loan, an applicant first must request an application form from the appropriate district public works integrating committee with geographical jurisdiction over the project for which a grant or loan is sought (see "**Natural resources and parks and recreation grant program; Introduction,**" below). The applicant must complete the application and include all of the information required by the act and in policies and requirements established under it (see below). (Sec. 164.652(A)(1).) In addition, an applicant must include an affidavit signed by the authorized representative of the applicant certifying that the applicant did not cause or contribute to the release of hazardous substances or petroleum at the brownfield that is the subject of the application. The act prohibits a person from submitting a false affidavit. (Sec. 122.652(A)(2).) Anyone who knowingly submits a false affidavit is guilty of a felony and must be fined not less than \$10,000 or more than \$25,000, or imprisoned not less than two years or more than four years, or both (sec. 122.99.) The act requires the Clean Ohio Council to supply application forms to each integrating committee (sec. 164.652(D)).

The act requires the Director of Development to establish policies and requirements governing the form and content of the applications. The policies and requirements must require that an application include, at a minimum: (1) the name, address, and telephone number of the applicant, (2) the legal description of the property for which the grant or loan is requested, (3) a summary description of the hazardous substances or petroleum present at the brownfield and a certified copy of the results of the assessment (see below), (4) a detailed explanation of the proposed cleanup or remediation of the brownfield, including an identification of the applicable cleanup standards, and a detailed description of the proposed use of the brownfield after completion of the cleanup or remediation, (5) an estimate of the total cost to clean up or remediate the brownfield in order to comply with the applicable cleanup standards, which must include the cost of employing a certified professional (see "**Remediation and cleanup procedures,**" below), (6) a detailed explanation of the portion of the estimated total cost of the cleanup or remediation of the brownfield that the applicant proposes to provide as required under the act and financial records supporting the proposal, (7) a certified copy of a resolution or ordinance approving the project that the applicant must obtain from the board of township trustees of the township or the legislative authority of the municipal corporation in which the property is located, whichever is applicable, (8) a description of the estimated economic benefit that will result from a cleanup or remediation of the brownfield, (9) an application summary for purposes of review by an integrating committee or, if applicable, the executive committee of an integrating committee (see below), (10) with respect to applications for loans, information demonstrating that the applicant will implement a financial management plan that includes, without limitation, provisions for the satisfactory repayment of the loan, and (11) any other provisions that the Director determines should be included in the application. (Sec. 122.657(A).)

After completion of the application, but prior to the submission of the application to the integrating committee (see below), the applicant must conduct a public meeting concerning the application and the proposed cleanup or remediation. Not later than 45 days prior to conducting the public meeting, the applicant must provide notice of the date, time, and location of the public meeting in a newspaper of general circulation in the county in which the property that is the subject of the application is located. In addition, not later than 45 days prior to the hearing, the applicant must post notice of the date, time, and location of the public meeting at the property on a sign that measures not less than four feet by four feet or, if the political subdivision in which the sign is to be posted prohibits a sign of that size, the maximum size of sign permitted by that political subdivision. (Sec. 122.652(A)(3).)

Not later than 45 days prior to the public meeting, the applicant must provide a copy of the application to a public library in the vicinity of the property for public review. The submission of the application and the location of the public library must be included in the required notice. The general public may submit comments to the applicant concerning the application prior to and at the public meeting. (Sec. 122.652(A)(3).) The Director of Development is required to establish procedures for conducting public meetings and providing public notice (sec. 122.657(B)).

Submission of applications to integrating committees

An applicant is required to submit a completed application, all required information, and an application summary to the appropriate integrating committee. Based on a review of the application summaries submitted to it, an integrating committee or, if required, the executive committee of the integrating committee must prioritize all applications in accordance with criteria and procedures established by the Director of Development. The integrating committee must choose not more than six applications annually that it determines merit funding and must forward those applications and all accompanying information to the Clean Ohio Council. In prioritizing and choosing applications, an integrating committee or, if required, the executive committee must consult with local and regional economic development agencies or resources, community development agencies or organizations, local business organizations, and other appropriate entities located or operating in the geographic jurisdiction of the integrating committee. (Sec. 122.652(B).)⁴ The Director of Development is required to

⁴ *Each of certain integrating committees organized under the Ohio Public Works Commission Law must have all of the decisions of that integrating committee under the act approved by an executive committee that is required to be established under that Law. The affirmative vote of at least seven or nine members of an executive committee, whichever is applicable under the Ohio Public Works Commission Law, is required for*

establish policies and requirements establishing criteria to be used by integrating committees or, if required, executive committees of integrating committees when prioritizing projects. The policies and requirements also must establish procedures that integrating committees or executive committees must use in applying the criteria. (Sec. 122.657(C).)

Upon receipt of an application from an integrating committee, the Council must examine it and all accompanying information to determine if the application is complete. If the Council determines that the application is not complete, the Council immediately must notify the applicant that the application is not complete, provide a description of the information that is missing from the application, and return it and all accompanying information to the applicant. The act allows the applicant to resubmit the application directly to the Council. (Sec. 122.653(A).)

Approval of applications and prioritization of projects

The Director of Development is required to establish policies and requirements establishing a selection process for the prioritization and approval of applications for grants or loans for brownfield cleanup or remediation projects. The selection process must give priority to projects in which the post-cleanup or remediation use of the property at issue will be for a combination of residential, commercial, or industrial purposes, which may include the conversion of a portion of a brownfield to a recreation, park, or natural area that is integrated with the residential, commercial, or industrial use of the brownfield after cleanup or remediation, or will incorporate projects that are funded by grants awarded under the natural resources component of the act (see "**Natural resources and parks and recreation grant program**," below). The policies and requirements must require the selection process to incorporate and emphasize the potential economic benefit that will result from the cleanup or remediation of a brownfield; the potential environmental improvement that will result from the cleanup or remediation of a brownfield; the amount and nature of the match provided by an applicant as required by the act; funding priorities recommended by integrating committees or executive committees; the potential benefit to low-income communities, including minority communities, that will result from the cleanup or remediation of a brownfield; and any other factors that the Director considers appropriate. (Sec. 122.657(D).)

any action taken by an executive committee for purposes of prioritizing applications under the act. A decision of an executive committee may be rejected by a vote of at least two-thirds of the full membership of the applicable integrating committee not later than 30 days after the executive committee action. If an executive committee is required to prioritize applications, only applications that are approved by the executive committee may be submitted to the Clean Ohio Council for the act's purposes. (Sec. 122.652(C).)

Once an application has been accepted and has been evaluated in accordance with the selection process, it must be approved or disapproved in writing. The Council cannot approve a project that fails to comply with the requirements established under the act and in policies and requirements established under the act. In addition, the Council cannot approve a project if the applicant caused or contributed to the contamination at the property. (Sec. 122.653(B).)

Agreements for the issuance of grants or loans

If the Council approves an application for a brownfield grant or loan, the Council must enter into an agreement with the applicant to award a grant or make a loan for the applicant's brownfield cleanup or remediation project. The agreement must be executed prior to the payment or disbursement of any funds approved by the Council. In addition, the agreement must contain, at a minimum, all of the following:

- (1) The designation of a single officer or employee of the applicant who will serve as project manager;
- (2) Procedures for the payment or disbursement of funds from the grant or loan to the applicant;
- (3) A designation of the percentage of the estimated total cost of the project for which the grant or loan will provide funding, which cannot exceed 75% of that cost as provided under the act (see above);
- (4) A description of the manner by which the applicant will provide the remainder of the estimated total cost of the project, which must equal at least 25% of that cost as provided under the act (see above);
- (5) An assurance that the applicant will clean up or remediate the brownfield to the applicable cleanup standards (see below);
- (6) A provision for the reimbursement of grant moneys or immediate repayment of the loan if the completed project does not comply with applicable cleanup standards; and
- (7) Any other provisions that the Council considers necessary in order to ensure that the project's implementation will comply with the requirements established under the act and in policies and requirements established under the act (sec. 122.653(C)).

If the Council executes an agreement, it must forward a copy of the agreement to the Department of Development for the purpose of administering the

grant or loan in accordance with the act's procedures (see above) (sec. 122.653(D)). Finally, the act provides that a grant may be awarded or a loan may be made for a project to an applicant to pay the costs of cleanup or remediation of a brownfield in order to comply with any applicable cleanup standards (sec. 122.653(E)).

Remediation and cleanup procedures

Except as discussed below, an applicant who has entered into an agreement with the Clean Ohio Council for a grant or loan from the Clean Ohio Revitalization Fund must employ a certified professional to determine if the brownfield cleanup or remediation project complies with applicable cleanup standards. The certified professional must make that determination in accordance with the Voluntary Action Program Law and rules adopted under it. (Sec. 122.654(A).) The act defines "applicable cleanup standards" to mean either of the following: (1) for property to which the Solid, Hazardous, and Infectious Waste Law and rules adopted under it apply, the requirements for closure or corrective action established in rules adopted under that Law, or (2) for property to which the Voluntary Action Program Law and rules adopted under it apply, the cleanup standards that are established in rules adopted under that Law (secs. 122.65(A) and 3734.12 and 3746.04, not in the act). In addition, the act defines "certified professional" to have the same meaning as in the Voluntary Action Program Law (secs. 122.65(E) and 3746.01, not in the act).

If the certified professional determines that the cleanup or remediation complies with the applicable cleanup standards, the certified professional must prepare a no further action letter (sec. 122.654(A)). The act defines a "no further action letter" to mean a letter that is prepared by a certified professional when, on the basis of that person's best knowledge, information, and belief, the certified professional concludes that the cleanup or remediation of a brownfield meets the applicable cleanup standards and that contains all of the information specified in rules adopted under the Voluntary Action Program Law (sec. 122.65(M)).

Upon completion of a no further action letter, the certified professional must send a copy of the letter to the applicant. The letter must be accompanied by both of the following:

(1) A written request that the applicant notify the certified professional as to whether the applicant wishes to submit the no further action letter to the Director of Environmental Protection; and

(2) A written notice informing the applicant that the original no further action letter may be submitted to the Director only by a certified professional and that the person may receive a covenant not to sue under the Voluntary Action

Program Law in connection with the cleanup or remediation only if the no further action letter is submitted to the Director on the applicant's behalf by the certified professional. (Sec. 122.654(A).)

The certified professional also must send a copy of the no further action letter to the Clean Ohio Council and to the Director.

Promptly after receipt of the letter, request, and notice, the applicant must send written notice to the certified professional informing the certified professional as to whether the applicant wishes to submit the no further action letter to the Director of Environmental Protection and must send a copy of the notice to the Clean Ohio Council. If the applicant's notice indicates that the applicant wishes to have the no further action letter submitted to the Director, promptly after receipt of the notice, the certified professional must submit the original no further action letter to the Director by certified mail on behalf of the applicant. In addition, the certified professional must send written notice to the Clean Ohio Council informing the Council that the original no further action letter has been submitted to the Director. If the applicant notifies the certified professional that the applicant does not wish to submit the no further action letter to the Director, the certified professional must send the original no further action letter to the applicant promptly after receiving the notice. (Sec. 122.654(A).) If the Director of Environmental Protection receives an original no further action letter from a certified professional on behalf of an applicant, the Director must issue or deny a covenant not to sue in accordance with the Voluntary Action Program Law except as otherwise specifically provided in the act (sec. 122.654(D)).

An applicant who has entered into an agreement with the Clean Ohio Council and who is issued a covenant not to sue under the Voluntary Action Program Law is not required to pay the fee established in rules adopted under that Law (sec. 3746.13(D)). If the Director receives a copy of a no further action letter from a certified professional, the Director must review the letter and determine if the cleanup or remediation complies with applicable cleanup standards. The Director must prepare a written report of the Director's determination and send a copy of the report to the Clean Ohio Council. (Sec. 122.654(C).)

If the certified professional determines that the cleanup or remediation does not comply with applicable cleanup standards, the certified professional must send to the applicant and the Clean Ohio Council written notice of that fact and of the certified professional's inability to issue a no further action letter for the property (sec. 122.654(B)).

A certified professional must maintain all documents and data prepared or acquired by the certified professional in connection with a cleanup or remediation

for not less than ten years after the date of the issuance of a no further action letter or after notice of the nonissuance of a no further action letter. The Clean Ohio Council and the Director of Environmental Protection may request a certified professional to provide the Council and the Director with documents and data for purposes of the act's provisions. The act prohibits a certified professional from failing to comply with those requirements. (Sec. 122.654(E).)

The act authorizes the Clean Ohio Council and the Director of Environmental Protection to request an applicant to provide the Council or the Director with documents and data for purposes of the act's provisions. In addition, the act prohibits an applicant from failing to comply with such a request. (Sec. 122.654(F).) For purposes of the act's brownfield provisions, the Voluntary Action Program Law and rules adopted under it apply except as otherwise specifically provided under the act (sec. 122.654(G)).

For cleanup or remediation of a brownfield that is subject to closure or corrective action requirements established in rules adopted under the Solid, Hazardous, and Infectious Waste Law, an applicant who has entered into an agreement with the Clean Ohio Council must send to the Director of Environmental Protection documentation that demonstrates that the cleanup or remediation complies with the applicable cleanup standards. The Director must review the documentation and determine if the cleanup or remediation complies with the applicable cleanup standards. For purposes of the cleanup or remediation, the applicant also must obtain any necessary review or approval from the Director. The Director must prepare a written report of the Director's determination and send a copy of the report to the Clean Ohio Council. (Sec. 122.654(H).)

Filing requirements

A no further action letter, a covenant not to sue, if applicable, and any restrictions on the use of the property that are needed in order to comply with applicable cleanup standards must be filed by the applicant in the office of the county recorder of the county in which the property is located and must be recorded in the same manner as a deed to the property. The act requires all applicants to comply with this requirement. (Secs. 122.655(A) and 317.08.) In addition, the act provides that pursuant to the Registration of Land Title Law, a no further action letter and a covenant not to sue, if applicable, in connection with registered land, as defined in that Law, and any restrictions on the use of the property must be entered as a memorial on the page of the register where the title of the owner is registered (sec. 122.655(B)).⁵

⁵ R.C. Chapter 5309.

Program oversight policies and requirements

The act requires the Director of Development to establish policies and requirements governing the oversight of the brownfield revitalization grant and loan program. The oversight program must include, at a minimum, both of the following:

(1) Procedures for the accounting of invoices and receipts and any other documents that are necessary to demonstrate that a cleanup or remediation was properly performed; and

(2) Procedures that are necessary to provide a detailed explanation of the status of the property five years after the completed cleanup or remediation. (Sec. 122.657(F).)

Additional assistance for projects in eligible areas

An applicant may submit an application for property that is located in an eligible area on a form prescribed by the Director of Development to request a grant from the Clean Ohio Revitalization Fund to pay for the cost of an assessment that is required under the act, the cleanup or remediation of a brownfield, or public health projects. The Director is precluded from making loans from the Clean Ohio Revitalization Fund for these purposes. (Sec. 122.656(A)(1).)

Definitions. "Assessment" is defined by the act to mean a phase I and phase II property assessment conducted in accordance with the Voluntary Action Program Law and rules adopted under it (sec. 122.65(C)). "Public health project" means the cleanup or remediation of a release or threatened release of hazardous substances or petroleum at a property where little or no economic redevelopment potential exists (sec. 122.65(P)). "Eligible area" is defined by the act to mean a distressed area, an inner city area, a labor surplus area, or a situational distress area (sec. 122.65(H)).

"Distressed area" is defined by the act to mean either a municipal corporation with a population of at least 50,000 or a county that meets any two of the following criteria: (1) its average rate of unemployment, during the most recent five-year period for which data are available, is equal to at least 125% of the average rate of unemployment for the United States for the same period, (2) it has a per capita income equal to or below 80% of the median county per capita income of the United States as determined by the most recently available figures from the United States Census Bureau, and (3) in the case of a municipal corporation, at least 20% of the residents have a total income for the most recent census year that is below the official poverty line as defined in state law, or in the case of a county, in intercensal years, the county has a ratio of transfer payment

income to total county income equal to or greater than 25%. "Distressed area" includes a municipal corporation the majority of the population of which is situated in a county that is a distressed area. (Sec. 122.65(G).)

"Inner city area" means an area in a municipal corporation that has a population of at least 100,000, is not a labor surplus area, and is a targeted investment area established by the municipal corporation that is comprised of block tracts identified in the most recently available figures from the United States Census Bureau in which at least 20% of the population in the area is at or below the official poverty line or of contiguous block tracts meeting those criteria (sec. 122.65(I)). "Labor surplus area" means an area designated as such by the United States Department of Labor (sec. 122.65(K)).

Finally, "situational distress area" means a county or a municipal corporation that has experienced or is experiencing a closing or downsizing of a major employer that will adversely affect the county or municipal corporation's economy and that has applied to the Director of Development to be designated as a situational distress area for not more than 30 months by demonstrating all of the following:

- (1) The number of jobs lost by the closing or downsizing;
- (2) The impact that the job loss has on the county or municipal corporation's unemployment rate as measured by the Director of Job and Family Services;
- (3) The annual payroll associated with the job loss;
- (4) The amount of state and local taxes associated with the job loss; and
- (5) The impact that the closing or downsizing has on suppliers located in the county or municipal corporation (sec. 122.65(R)).

Program requirements. For purposes of assisting projects in eligible areas, the Clean Ohio Council is required to annually devote 20% of the net proceeds of obligations deposited in the Clean Ohio Revitalization Fund for such projects (sec. 122.658(A)). That portion of net proceeds of obligations must be administered by the Department of Development in accordance with the act, policies and requirements established under it, and the terms of agreements entered into for purposes of grants issued for such projects (see below). The act precludes the Director from granting more than \$25 million for public health projects for property that is located in eligible areas. (Sec. 122.658(E).)

Grants awarded for projects in eligible areas must be used by an applicant only to pay the costs of actually conducting an assessment, conducting a cleanup

or remediation of a brownfield, or a public health project and must not be used by an applicant to pay any administrative costs incurred by the applicant. Costs related to the use of a certified professional for purposes of the act are not administrative costs and may be paid with money from such grants. (Sec. 122.658(F).) The Director of Development must establish policies and requirements delineating what constitutes administrative costs (sec. 122.657(G)).

The act requires the authorized representative of an applicant to sign and submit an affidavit with the application certifying that the applicant did not cause or contribute to the release of hazardous substances or petroleum on the property that is the subject of the application. The act prohibits a person from submitting a false affidavit. (Sec. 122.656(A)(2).) Anyone who knowingly submits a false affidavit is guilty of a felony and must be fined not less than \$10,000 or more than \$25,000, or imprisoned not less than two years or more than four years, or both (sec. 122.99).

After completion of the application, but prior to the submission of the application to the Director, the applicant must comply with the act's public notice and public meeting requirements (see above) (sec. 122.656(A)(3)).

Upon receipt of an application, the Director must examine it and all accompanying information to determine if the application is complete. If the Director determines that the application is not complete, the Director immediately must notify the applicant that it is not complete, provide a description of the information that is missing, and return the application and all accompanying information to the applicant. The applicant may resubmit the application. (Sec. 122.656(B).)

The act requires the Director to approve or disapprove in writing applications submitted for grants from the Clean Ohio Revitalization Fund for projects in eligible areas. Prior to the approval or disapproval of an application, the Director must notify the Clean Ohio Council of the pending approval or disapproval. The Director cannot approve an application that fails to comply with the policies and requirements established by the Director for purposes of the grants (see below) or if the applicant caused or contributed to the release of hazardous substances or petroleum at the property. (Sec. 122.656(C).)

If the Director approves an application, the Director must enter into an agreement with the applicant to award a grant to the applicant. The agreement must be executed prior to the payment or disbursement of any funds approved by the Director. (Sec. 122.656(D).) If the Director executes an agreement for a grant, the Director must forward a copy of it to the Clean Ohio Council (sec. 122.656(E)).

The Director must establish policies and requirements regarding the development of criteria that the Director must use when awarding grants for projects in eligible areas. The criteria must give priority to public health projects. In addition, the Director, in consultation with the Director of Environmental Protection, must establish policies and requirements that require the criteria to include a public health selection process that incorporates and emphasizes all of the following factors: (1) the potential environmental improvement that will result from the cleanup or remediation, (2) the ability of an applicant to access the property for purposes of cleanup or remediation, (3) the name and qualifications of the cleanup or remediation contractor, and (4) any other factors that the Director of Development considers appropriate. Further, the act authorizes the Director to develop any other policies and requirements that the Director determines are necessary for the administration of grants for projects in eligible areas. (Sec. 122.657(E).)

The act requires that for purposes of receiving such a grant for a project in an eligible area, an applicant must conduct, or cause to be conducted, an assessment, a cleanup or remediation of a brownfield, or a public health project in accordance with all applicable cleanup standards and environmental statutes and rules (sec. 122.656(F)).

Additional policies and requirements established by the Director of Development

In addition to the policies and requirements discussed above, the Director of Development is required to establish any other policies and requirements that the Director determines are necessary for the administration of the brownfield revitalization grant and loan program (sec. 122.657(I)).

Causes of action, rights, and liabilities

The act states that nothing in the brownfield revitalization portion of the act, nor any agreement entered into under that portion of the act, can be construed to amend, modify, repeal, or otherwise alter any other provision of state law relating to administrative, civil, or criminal penalties, or enforcement actions and remedies available to the Environmental Protection Agency, or in any way amend, modify, repeal, or alter the authority of that Agency to bring administrative, civil, or criminal actions under any other provision of law (sec. 122.659(A)). Nothing in the brownfield revitalization portion of the act affects the ability or authority of any person that is undertaking or has undertaken investigation or remediation activities at a brownfield under the act to seek cost recovery or contribution from or any relief available against any person who may have liability with respect to the brownfield (sec. 122.659(B)).

An applicant who has entered into an agreement with the Clean Ohio Council or the Director of Development under the act is not liable in a civil action under any Ohio statute or the common law of the state for the costs of an assessment or cleanup or remediation of hazardous substances or petroleum that is present at or on the property at the time at which the agreement was entered into, and is not subject to the issuance of an order by the Director of Environmental Protection under the Construction and Demolition Debris Law, the Solid, Hazardous, and Infectious Waste Law, the Emergency Planning Law, the Hazardous Substances Law, the Cessation of Chemical Handling Operations Law, the Safe Drinking Water Law, or the Water Pollution Control Law regarding an assessment or cleanup or remediation of hazardous substances or petroleum that is present at or on the property at the time at which the agreement was entered into, when all of the following conditions apply:

(1) No action or omission of the applicant caused, contributed to, or exacerbated a release or threatened release of hazardous substances or petroleum at or on the property;

(2) The applicant conducts or causes to be conducted all assessments and cleanup or remediation at or on the property in compliance with the agreement and in accordance with all applicable laws; and

(3) The applicant conducts or causes to be conducted activities occurring at the property, which are not related to assessments or cleanup or remediation at or on the property, in compliance with any applicable requirements established under the laws specified above, the law governing underground storage tanks, the Nuisances Law, and rules adopted under those laws (sec. 122.659(C)(1)).

The act specifies that the above liability provisions do not create, and cannot be construed as creating, a new cause of action against or substantive legal right for the applicant. In addition, the provisions do not affect, and cannot be construed as affecting, any immunities from civil liability or defenses established by another provision of the Revised Code or available at common law to which an applicant may be entitled. Finally, the act specifies that the provisions cannot be construed as affecting any obligations to comply with any environmental laws established in the Revised Code or the common law of the state with respect to any release of hazardous substances or petroleum after the issuance of a covenant not to sue under the Voluntary Action Program Law or a determination made concerning whether a cleanup or remediation of a brownfield that is subject to

closure or corrective action requirements complies with the applicable cleanup standards. (Sec. 122.659(C)(2) to (4).)⁶

Natural resources and parks and recreation grant program

Introduction

The Ohio Constitution authorizes the sale of bonds to finance certain public infrastructure projects. The General Assembly has assigned the Ohio Public Works Commission the task of overseeing the distribution of the proceeds of those bonds to local political subdivisions. The law governing the Ohio Public Works Commission divides the state into 19 districts. Each district is represented by a public works integrating committee that is generally composed of persons representing local political subdivisions. Each district public works integrating committee is authorized to select the requests for financial assistance that will be formally submitted by the district to the Director of the Ohio Public Works Commission. The Director approves requests and enters into agreements with funding recipients.

The act uses this existing framework, consisting of the Ohio Public Works Commission and local district public works integrating committees, for the purpose of distributing moneys generated from the sale of bonds and deposited in the Clean Ohio Conservation Fund for natural resource and parks and recreation projects (see above). Each district public works integrating committee is required to appoint a natural resources assistance council for the purpose of reviewing and approving or disapproving projects that may be eligible for financial assistance. The Ohio Public Works Commission reviews the approved projects and determines whether to grant final approval of the projects. Once a project is finally approved, it may receive funding.

Clean Ohio Conservation Fund and distribution of moneys

All natural resources and parks and recreation projects that receive grants under the act are funded from moneys deposited into the Clean Ohio Conservation Fund, which is created by the act. Seventy-five per cent of the net proceeds of general obligations issued and sold by the Ohio Public Facilities Commission under the act must be deposited in the Fund (see above). Investment earnings of the Fund must be credited to it. For two years after the effective date of the act, investment earnings credited to the Fund may be used to pay costs incurred by the Ohio Public Works Commission in administering the natural resources component

⁶ *The act contains an internal cross-reference that is incorrect. The analysis reflects the legislative intent by describing the correct cross-reference.*

of the act. Money deposited in the Fund must be used to make grants to local political subdivisions and nonprofit organizations for natural resources and parks and recreation projects. The Clean Ohio Conservation Fund must be administered by the Ohio Public Works Commission. (Sec. 164.27(A).)

Money for natural resources and parks and recreation projects are distributed under the act to the existing 19 public works districts via a modified per capita process with each district being guaranteed a certain pro rata share of the distributed moneys. Money is allocated under the act to districts that are represented by natural resources assistance councils (see below) as follows:

(1) Each district must receive an amount that is equal to $\frac{1}{4}$ of 1% of the total amount of money allocated to all districts each year for each county that is represented by the district. For example, if a district contains three counties and the total amount allocated during the year to all districts is \$37,500,000, the district receives $\frac{3}{4}$ of 1% of all moneys allocated for all districts, that is, \$281,250.

(2) The remaining money must be allocated to each district annually on a per capita basis. (Sec. 164.27(B).)

A grant that is awarded under the act may provide up to 75% of the estimated cost of a project. Matching funds from a grant recipient may consist of contributions of money by any person, any local political subdivision, or the federal government or of contributions in-kind by such entities through the purchase or donation of equipment, land, easements, interest in land, labor, or materials necessary to complete the project. The Governor vetoed a provision that would have prohibited matching funds from consisting of state money, except that under that provision grants awarded by the Governor's Office of Appalachian Ohio could have been used as matching funds. (Sec. 164.27(C).)

The Director of the Commission must notify the Director of Budget and Management of the amounts allocated pursuant to the act, and that information must be entered in the state accounting system. The Director of Budget and Management may establish appropriate budget line items or other mechanisms that are needed to track the allocations. (Sec. 164.27(D).)

Grants awarded under the natural resources component of the act from the Clean Ohio Conservation Fund must be used by a local political subdivision or nonprofit organization (see below) only to pay the costs related to the purposes for which grants may be issued under that component of the act and must not be used by a local political subdivision or nonprofit organization to pay any administrative costs incurred by it (sec. 164.27(E)). The Director of the Ohio Public Works Commission is required to adopt policies delineating what constitutes administrative costs (sec. 164.26(A)).

Oversight of the program: Ohio Public Works Commission

The act grants general oversight authority over natural resources and parks and recreation grants to the Ohio Public Works Commission and gives the Commission final approval authority over all projects that are proposed to receive grants under the program. The act adds the Director of Natural Resources to the Commission as a nonvoting, ex officio member and removes the statement of public policy in the law governing the Commission (sec. 164.02(A)). In administering the program, the act requires the Commission to exercise any authority and use any procedures granted or established under specified statutes relating to the Commission and its role in assisting local political subdivisions with local infrastructure projects. (Sec. 164.26(B).)

Definitions

For purposes of the act, "local political subdivision" means a county, municipal corporation, township, conservancy district, soil and water conservation district, joint recreation district, park district, or other similar park authority (sec. 164.20(A)). As a matter of clarification, the act specifies that the definition of "project" in the statutes governing the Ohio Public Works Commission does not apply to natural resources and parks and recreation projects receiving grants under the act (sec. 164.20(C)). "Nonprofit organization" means an organization that is exempt from federal income taxation pursuant to federal law and that has as one of its designated activities, as indicated on Internal Revenue Service Form 1023 "recognition of exemption," an activity that is directly related to the purposes for which grants may be issued under the act for natural resources and parks and recreation projects (sec. 164.20(B)).

Natural resources assistance councils

Under the act, each district public works integrating committee or, if applicable, the executive committee of the integrating committee must appoint a natural resources assistance council for the purpose of reviewing and approving or disapproving proposed natural resources and parks and recreation projects for grant funding. Each council must consist of 11 members. Of the 11 members, one must be a member of the appointing integrating committee and one must represent a soil and water conservation district that is located within the geographical jurisdiction of the appointing integrating committee. The nine other members must be appointed from the following categories of organizations, units of government, or agencies and must include at least one member from each of those categories:

(1) A county, municipal corporation, township, conservancy district, regional or joint district or unit of local government, or regional or joint political

subdivision that is located within the geographical jurisdiction of the appointing integrating committee;

(2) A conservation organization, an environmental advocacy organization, an organization with a primary interest in watershed protection and restoration, the Department of Natural Resources, the Environmental Protection Agency, or the United States Natural Resources Conservation Service;

(3) A city park system or metropolitan park system or a board of park commissioners from a county that is located within the geographical jurisdiction of the appointing integrating committee, a statewide parks and recreation organization, or the United States National Park Service;

(4) A statewide organization representing agriculture, an organization representing forestry interests, the Department of Agriculture, or the United States Department of Agriculture; and

(5) An organization representing business, local realtors, or a planning agency, including a port authority, located within the geographical jurisdiction of the appointing integrating committee. (Sec. 164.21(A).)

Any organization, unit of government, or agency that is listed above cannot be represented by more than one member on the council at any given time. The membership of a natural resources assistance council must reflect the demographic and economic diversity of the population located within the geographical area represented by the council. The act establishes standard appointment procedures and staggered three-year terms of office for members of the council. A council must be appointed by the appropriate integrating committee not later than 90 days after the act's effective date. (Sec. 164.21(A).)

Under the act, a natural resources assistance council must elect a chairperson, a vice-chairperson, and other officers that the council considers appropriate. A council may adopt bylaws governing its operation, including bylaws that establish the frequency of regular meetings and any necessary procedures. All meetings of a council are subject to the Open Meetings Law. (Sec. 164.21(B).) The Sunset Law does not apply to natural resources assistance councils (sec. 164.21(D)).

The act specifies that serving as a member of a council does not constitute holding a public office or position of employment under Ohio law and does not confer a right to compensation from any state agency. Additionally, a member of a council does not have an unlawful interest in a public contract solely by virtue of the receipt of financial assistance under the act by the local political subdivision of which the member is also a public official or appointee. (Sec. 164.21(C).)

Types of projects that may be funded

Natural resources assistance councils must review and approve or disapprove grant applications in accordance with the act for projects that propose to do either of the following:

(1) Provide for open space acquisition and related development of those open spaces, including the acquisition of easements. Open space acquisition projects include acquisition of land or rights in land for parks, forests, wetlands, natural areas that protect an endangered plant or animal population, other natural areas, and connecting corridors for natural areas. Related development projects include projects for the construction or enhancement of facilities that are necessary to make an open space area accessible and useable by the general public. Projects proposed for open space acquisition and related development must emphasize the following:

(a) The support of comprehensive open space planning and incorporation of aesthetically pleasing and ecologically informed design;

(b) The enhancement of economic development that relies on recreation and ecotourism in areas with relatively high unemployment and lower incomes;

(c) The protection of habitat for rare, threatened, and endangered species or the preservation of high quality, viable habitat for plant and animal species;

(d) The preservation of existing high quality wetlands or other scarce natural resources within the geographical jurisdiction of a council;

(e) The inclusion of pedestrian or bicycle linkages to other open space preserves and population centers;

(f) The enhancement of educational opportunities and provision of physical links to schools and after-school centers;

(g) The preservation or restoration of water quality, natural stream channels, functioning floodplains, wetlands, streamside forests, and other natural features that contribute to the quality of life in Ohio and to the state's natural heritage; projects cannot include hydromodification projects such as dams, dredging, sedimentation, and bank clearing and must not accelerate untreated water runoff or encourage invasive nonnative species;

(h) The reduction or elimination of nonnative, invasive species of plants or animals; and

(i) The proper management of areas where safe fishing, hunting, and trapping may take place in a manner that will preserve a balanced natural ecosystem. (Sec. 164.22(A).)

(2) Protect and enhance riparian corridors or watersheds, including the protection and enhancement of streams, rivers, lakes, and other waters of the state. Such projects may include the reforestation of land or the planting of vegetation for filtration purposes, the fee simple acquisition of lands for the purpose of providing access to riparian corridors or watersheds or for other purposes necessary for the protection and enhancement of riparian corridors or watersheds, and the acquisition of easements for the purpose of protecting and enhancing riparian corridors or watersheds. Projects for the protection and enhancement of riparian corridors or watersheds must emphasize the following:

- (a) The increase of habitat protection;
- (b) Inclusion as part of a stream corridor-wide or watershed-wide plan;
- (c) The provision of multiple recreational, economic, and aesthetic preservation benefits;
- (d) The preservation or restoration of floodplain and streamside forest functions;
- (e) The preservation of headwater streams; and
- (f) The restoration and preservation of aquatic biological communities.

Projects cannot initiate or perpetuate hydromodification projects such as dams, ditch improvement, or channelization. (Sec. 164.22(B).)

Grant money may be used for preliminary costs related to projects that are eligible for funding under the act, including planning costs, design costs, engineering costs, costs of appraisals, environmental assessments, and archeological surveys (sec. 164.22)).

Applications for grants

An entity seeking a grant for a project that is eligible for funding under the act must submit an application to the natural resources assistance council with geographic jurisdiction over the proposed project area. Entities that are eligible for funding are limited to local political subdivisions and nonprofit organizations. The Director of the Ohio Public Works Commission must develop the form of the application and must provide application forms to each council. The application must require at least all of the following:

(1) An identification of the local political subdivision or nonprofit organization that is responsible for the execution and completion of the proposed project;

(2) A detailed description of the proposed project;

(3) An identification of the areas that are proposed to be protected, restored, preserved, or constructed;

(4) Detailed information concerning the practices and procedures that will be undertaken to complete the project;

(5) A formal detailed estimate of the project's cost;

(6) The amount and nature of the money or resources to be used as matching funds for the project; matching funds must constitute at least 25% of the total cost of the project and may consist of contributions of money by any person, any local political subdivision, or the federal government or of contributions in-kind by such parties through the purchase or donation of equipment, land, easements, labor, or materials necessary to complete the project. The Governor vetoed a provision that would have prohibited matching funds from consisting of state money, except that under that provision grants awarded by the Governor's Office of Appalachian Ohio could have been used as matching funds;

(7) An identification of any participation by state agencies that may have expertise regarding the particular project and that may provide assistance with respect to the project;

(8) Information concerning the coordination of the project among local political subdivisions, state agencies, federal agencies, community organizations, conservation organizations, and local business groups;

(9) Information about any coordination that the project will have with projects being undertaken under the act that are under the jurisdiction of other natural resources assistance councils throughout the state or with brownfield revitalization projects being undertaken under the act (see above);

(10) Information about public participation in the planning and execution of the project;

(11) Information about whether the general public will be given access to the project area upon completion of the project; and

(12) A timetable for completion of the proposed project. (Sec. 164.23(A).)



In addition to the application, an applicant for a grant must include with the application all of the following:

(1) Except as discussed below, a copy of a resolution supporting the project from each county in which the proposed project is to be conducted and whichever of the following is applicable:

(a) If the proposed project is to be conducted wholly within the geographical boundaries of one township, a copy of a resolution supporting the project from the township;

(b) If the proposed project is to be conducted wholly within the geographical boundaries of one municipal corporation, a copy of a resolution supporting the project from the municipal corporation;

(c) If the proposed project is to be conducted in more than one, but fewer than five townships or municipal corporations, a copy of a resolution supporting the project from at least one-half of the total number of townships and municipal corporations in which the proposed project is to be conducted;

(d) If the proposed project is to be conducted in five or more townships or municipal corporations, a copy of a resolution supporting the project from at least three-fifths of the total number of townships and municipal corporations in which the proposed project is to be conducted.

However, if the applicant is a county and the proposed project is to be located wholly within the geographical boundaries of the county, the applicant is not required to include a copy of a resolution from any township or municipal corporation. If the applicant is a municipal corporation and the proposed project is to be located wholly within the geographical boundaries of the municipal corporation, the applicant is not required to include a copy of a resolution from the county in which it is located. If the applicant is a township and the proposed project is to be located wholly within the geographical boundaries of the township, the applicant is not required to include a copy of a resolution from the county in which it is located.

(2) Documentation that demonstrates that the applicant has the capacity, financial or otherwise, to complete the project for which the grant is sought and to provide any necessary ongoing maintenance of the project; and

(3) Documentation that indicates compliance with the long-term ownership or control policies established under the act. (Sec. 164.23(B).)

The Director of the Ohio Public Works Commission is required to establish policies related to the need for long-term ownership, or long-term control through



a lease or the purchase of an easement, of real property that is the subject of an application for a natural resources and parks and recreation grant. The Director also must establish requirements for documentation to be submitted by grant applicants that is necessary for the proper administration of the long-term ownership or control requirements. The policies must provide for proper penalties, including grant repayment, for entities that fail to comply with the long-term ownership or control requirements. (Sec. 164.26(A).)

Prior to submitting an application for a grant for a project, an applicant that is a park district or other similar park authority must submit a copy of the application to the legislative authority of each county, township, and municipal corporation in which the proposed project will be located. Not later than 21 days after receipt of the copy of the application, the legislative authority may adopt a resolution objecting to the proposed project. If a legislative authority adopts a resolution by the end of the 21-day period objecting to the proposed project, the legislative authority immediately must send a copy of the resolution to the applicant and to the appropriate natural resources assistance council. However, if a legislative authority fails to adopt a resolution by the end of that period objecting to the proposed project, it must be conclusively presumed that the legislative authority does not object to the proposed project. (Sec. 164.23(C)(1).)

If the applicant receives a copy of a resolution from any legislative authority objecting to the proposed project that was adopted by the end of the 21-day period, the applicant cannot submit the application to the appropriate natural resources assistance council. If the applicant does not receive any such resolutions, the applicant may proceed to submit the application to the appropriate natural resources assistance council and must include with it an affidavit stating that the applicant notified all affected counties, townships, and municipal corporations as required under the act and that the applicant did not receive any timely resolutions objecting to the proposed project. The act provides that the affidavit is in lieu of the copies of resolutions from each county and from the appropriate number of townships and municipal corporations that an applicant otherwise must submit with an application (see above). (Sec. 164.23(C)(2).)

If an applicant submits a false affidavit, the appropriate natural resources assistance council must deny the application for a grant. In addition, if an applicant has received a grant at the time that a false affidavit is discovered, the applicant must return all of the money awarded in the grant. (Sec. 164.23(C)(2).)

If an applicant that is a park district or other similar park authority proposes a project that will be located in more than one county, township, or municipal corporation and receives a timely resolution objecting to the proposed project from at least one, but not all, of the legislative authorities of those counties, townships, and municipal corporations, the applicant may submit an application for, and be

awarded a grant for, the portion of the proposed project that will be located in the counties, townships, and municipal corporations whose legislative authorities did not adopt resolutions objecting to the proposed project (sec. 164.23(C)(3)).

Upon receipt of an application and the specified information, a council may request additional information concerning the proposed project. Upon receiving such a request, the entity proposing the project must provide the additional information. (Sec. 164.23(D).)

Criteria to be considered in approving or disapproving projects for funding

A natural resources assistance council must review each application for a grant for a natural resources and parks and recreation project submitted under the act. In reviewing an application for the purpose of determining whether to approve or disapprove the application, a council must consider all of the following criteria:

- (1) Whether the project emphasizes the factors specified for each type of project (open space or stream and watershed) (see above);
- (2) The amount of funding that is necessary for the completion of the project;
- (3) The amount and percentage of the matching funds provided under the proposal;
- (4) The level of coordination among local political subdivisions, state agencies, federal agencies, community organizations, conservation organizations, and local business groups;
- (5) The level of coordination with projects being undertaken under the jurisdiction of other integrating committees throughout the state or with brownfield revitalization projects being undertaken under the act (see above);
- (6) The relative economic, social, and environmental benefits that the proposed project will bring to the geographical area represented by the council as compared to other proposed projects;
- (7) Whether the project incorporates more than one purpose for which the grant moneys may be used;
- (8) Whether the general public will be given access to the project area upon completion of the project;

(9) Whether the project will comply with the requirements of the act related to natural resources and parks and recreation grants;

(10) The readiness of the applicant to proceed with the project; and

(11) Any other factors that are relevant to the project. (Sec. 164.24(A).)

Prioritization and approval of projects

A natural resources assistance council must establish a prioritization and selection methodology system for applications submitted under the act. The methodology must be submitted to and approved by the Director of the Ohio Public Works Commission. (Sec. 164.24(B).)

In accordance with the methodology, a natural resources assistance council must approve or disapprove an application for a grant submitted to it after consideration of all the criteria specified in the act (see above). If the council approves an application, it must submit a copy of it, along with all accompanying materials, to the Ohio Public Works Commission for final approval or disapproval. (Sec. 164.24(C).)

Ohio Public Works Commission approval of proposed projects

The Director of the Ohio Public Works Commission must approve applications for grants submitted by natural resources assistance councils if all of the following apply:

(1) The approval of the application by the applicable natural resources assistance council was reasonably based on the criteria specified in the act (see above);

(2) The application for a grant and the proposed project for which the grant is to be used comply with all other requirements of the act related to natural resources and parks and recreation grants; and

(3) The amount of the financial assistance, when added to all other financial assistance provided during the calendar year for projects within the district for which a natural resources assistance council was appointed, does not exceed the district's allocation of money from the Clean Ohio Conservation Fund (see above). (Sec. 164.25.)

Recreational trails grant program

Clean Ohio Trail Fund

The act creates the Clean Ohio Trail Fund for the purpose of providing matching grants to nonprofit organizations and local political subdivisions to purchase land or interests in land for recreational trails and for the construction of such trails (sec. 1519.05(B)). For these purposes, "nonprofit organization" and "local political subdivision" have the same meanings as in the act's natural resources and parks and recreation grant program (see above) (sec. 1519.05(A)). The act requires that 12.5% of the net proceeds of general obligations issued and sold by the Ohio Public Facilities Commission be deposited in the Fund (see above) (secs. 151.09(C) and 1519.05(B)). Investment earnings of the Fund must be credited to it. For two years after the act's effective date, investment earnings credited to the Fund may be used to pay costs incurred by the Director of Natural Resources in administering the recreational trails component of the act. The act provides that money in the Fund cannot be used for the appropriation of land, rights, rights-of-way, franchises, easements, or other property through the exercise of the right of eminent domain. (Sec. 1519.05(B).)

Matching grants; applications

The act requires the Director of Natural Resources to establish procedures for providing matching grants to nonprofit organizations and local political subdivisions for the purposes of the recreational trails component of the act (sec. 1519.05(C)(1)). A matching grant may provide up to 75% of the cost of a recreational trail project, and the recipient of the matching grant must provide not less than 25% of that cost (sec. 1519.05(B)). The Director must include procedures for developing an application form and soliciting, accepting, and approving applications and for participation by nonprofit organizations and local political subdivisions in the application process (sec. 1519.05(C)(1)).

In addition, the Director's policies must establish items of value, such as in-kind contributions of land, easements or other interests in land, labor, or materials, that may be considered as contributing toward the percentage of the cost of a recreational trails project that must be provided by a matching grant recipient. The Governor vetoed a provision that would have required the policies to prohibit state money from being considered as contributing toward the matching share percentage, except that under that provision grants awarded by the Governor's Office of Appalachian Ohio could have been considered as contributing toward that percentage. (Sec. 1519.05(C)(4).)

Eligibility criteria for grants

The act also requires the Director to establish policies establishing eligibility criteria that must be satisfied by an applicant in order to receive a matching grant and that emphasize the following:

- (1) Synchronization with the statewide trail plan;
- (2) Complete regional systems and links to the statewide trail system;
- (3) A combination of funds from various state agencies;
- (4) The provision of links in urban areas that support commuter access and show economic impact on local communities;
- (5) The linkage of population centers with public outdoor recreation areas and facilities;
- (6) The purchase of rail lines that are linked to the statewide trail plan; and
- (7) The preservation of natural corridors (sec. 1519.05(C)(3)).

Resolutions of support

The Director's policies also must require an application for a matching grant to include a copy of a resolution supporting the project from each county in which the proposed project is to be conducted and whichever of the following is applicable:

- (1) If the proposed project is to be conducted wholly within the geographical boundaries of one township, a copy of a resolution supporting the project from the township;
- (2) If the proposed project is to be conducted wholly within the geographical boundaries of one municipal corporation, a copy of a resolution supporting the project from the municipal corporation;
- (3) If the proposed project is to be conducted in more than one, but fewer than five townships or municipal corporations, a copy of a resolution supporting the project from at least one-half of the total number of townships and municipal corporations in which the proposed project is to be conducted;
- (4) If the proposed project is to be conducted in five or more townships or municipal corporations, a copy of a resolution supporting the project from at least

three-fifths of the total number of townships and municipal corporations in which the proposed project is to be conducted. (Sec. 1519.05(C)(2).)⁷

Clean Ohio Trail Advisory Board

The act creates the Clean Ohio Trail Advisory Board to advise the Director concerning the selection of applications to be awarded matching grants for recreational trail projects (sec. 1519.06(A) and (B)). The Board consists of nine voting members. Not later than 60 days after the act's effective date, the Director must appoint all of the following members to the Board:

- (1) One member who is a county commissioner and who is recommended by a statewide organization that represents county commissioners;
- (2) One member who is a township trustee and who is recommended by a statewide organization that represents township trustees;
- (3) One member who is a member of the legislative authority of a municipal corporation and who is recommended by a statewide organization that represents municipal corporations;
- (4) Three representatives of statewide nonprofit organizations dedicated to the creation of recreational trails; and
- (5) One representative each of development, environmental, and planning interests. (Sec. 1519.06(A).)

Members serve at the pleasure of the Director. The act establishes staggered three-year terms, except that the term of any member who is a county commissioner, a township trustee, or a member of the legislative authority of a municipal corporation must end when the member ceases to serve in that office. The act also enacts standard procedures related to vacancies and removal of members. (Sec. 1519.06(A).)

The act requires the Director or another employee who is designated by the Director to serve as the nonvoting chairperson of the Board. The Director annually must designate one member of the Board to serve as its vice-chairperson. The Board may adopt bylaws governing its operation and must meet at a time when the Director, or the Director's designee, considers it appropriate in order for

⁷ The act does not include "townships" in the first clause in item no. 4, but the intent of the General Assembly was to include townships in this requirement. The analysis reflects the General Assembly's intent.

the Board to provide advice to the Director concerning the selection of applications. (Sec. 1519.06(A).)

Serving as a member of the Board does not constitute holding a public office or position of employment under Ohio law and does not constitute grounds for removal of public officers or employees from their offices or positions of employment (sec. 1519.06(C)). A member must be reimbursed for actual and necessary expenses incurred in the discharge of duties as a member (sec. 1519.06(D)).

Farmland preservation

Background

Continuing law authorizes the creation of agricultural easements to retain the use of land predominantly in agriculture. The Director of Agriculture, municipal corporations, counties, and townships may purchase or hold agricultural easements. Continuing law also explicitly authorizes charitable organizations that are exempt from federal income taxation, described as an exempt organization under federal law, and organized for certain land preservation or protection purposes to acquire and hold agricultural easements.

Under continuing law, "agricultural easement" means an incorporeal right or interest in land that is held for the public purpose of retaining the use of land predominantly in agriculture; that imposes any limitations on the use or development of land that are appropriate at the time of creation of the easement to achieve that purpose; that is in the form of articles of dedication, easement, covenant, restriction, or condition; and that includes appropriate provisions for the holder to enter the property subject to the easement at reasonable times to ensure compliance with its provisions. "Agriculture" is defined as those activities occurring on land devoted exclusively to agricultural use, which is land that is eligible for agricultural use property tax valuation under continuing law (see below).

Clean Ohio Agricultural Easement Fund

The act creates the Clean Ohio Agricultural Easement Fund in the state treasury. The Fund is to be used by the Director of Agriculture exclusively to purchase agricultural easements in the name of the state and provide matching grants to charitable organizations, municipal corporations, counties, and townships for the purchase of such easements. (Sec. 901.21(F).) The act requires 12.5% of the net proceeds of general obligations issued and sold by the Ohio Public Facilities Commission to be deposited in the Fund and used by the Director for the same purposes as money in the continuing Agricultural Easement Purchase Fund

(secs. 151.09(C) and 901.21(F)). Investment earnings of the Fund must be credited to it. For two years after the effective date of the act, investment earnings credited to the Fund may be used to pay costs incurred by the Director of Agriculture in administering the farmland preservation component of the act. (Sec. 901.21(F).) In addition, the act requires the term of an agricultural easement purchased wholly or in part with money from the Fund to be perpetual and to run with the land (sec. 901.21(G)).

Size of matching grant

The act specifies that a matching grant that is made by the Director to a municipal corporation, county, township, or charitable organization for the purchase of an agricultural easement and that consists of moneys from the Clean Ohio Agricultural Easement Fund may provide up to 75% of the value of the agricultural easement. The act requires not less than 25% of the value of the agricultural easement to be provided by the recipient of the matching grant or donated by the person who is transferring the easement to the grant recipient. Under the act, the value of an agricultural easement is to be determined by a general real estate appraiser who is certified under continuing law. The act also specifies that the amount of a matching grant used for the purchase of a single agricultural easement cannot exceed \$1 million. (Sec. 901.22(D).)

Rules regulating agricultural easements purchased with matching grants consisting of proceeds of general obligations issued under the act

Under continuing law, the Director of Agriculture, in accordance with the Administrative Procedure Act, must adopt rules that establish procedures and eligibility criteria for making matching grants to municipal corporations, counties, townships, and charitable organizations for the purchase of agricultural easements. The act specifies that with respect to agricultural easements that are purchased or proposed to be purchased with such matching grants that consist of moneys from the Clean Ohio Agricultural Easement Fund, the rules must establish all of the following:

(1) Procedures for soliciting and accepting applications for matching grants, participation by local governments and by the public in the process of making matching grants to charitable organizations, and notifying local governments, charitable organizations, and organizations that represent the interests of farmers of the ranking system developed under item (2) below;

(2) A ranking system for applications for the matching grants that is based on the soil type, proximity of the land or other land that is conducive to agriculture as defined by rules and that is the subject of the application to other agricultural land or other land that is conducive to agriculture as defined by rules and that is

already or is in the process of becoming permanently protected from development, farm stewardship, development pressure, and, if applicable, a local comprehensive land use plan involved with a proposed agricultural easement. The rules must require that preference be given to proposed agricultural easements that involve the greatest proportion of all of the following:

(a) Prime soils, unique or locally important soils, microclimates, or similar features;

(b) Land that is adjacent to or that is in close proximity to other agricultural land or other land that is conducive to agriculture as defined by rules and that is already or is in the process of becoming permanently protected from development, by agricultural easement or otherwise, so that a buffer would exist between the land involving the proposed agricultural easement and areas that have been developed or likely will be developed for purposes other than agriculture;

(c) The use of best management practices, including federally or state approved conservation plans, and a history of substantial compliance with applicable federal and state laws;

(d) Development pressure that is imminent, but not a result of current location in the direct path of urban development; and

(e) Areas identified for agricultural protection in local comprehensive land use plans.

(3) Any other criteria that the Director determines are necessary for selecting applications for matching grants; and

(4) Requirements regarding the information that must be included in the annual monitoring report that must be prepared for an agricultural easement (see "**Monitoring of agricultural easement**," below), procedures for submitting a copy of the report to the Office of Farmland Preservation in the Department of Agriculture, and requirements and procedures governing corrective actions that may be necessary to enforce the terms of the agricultural easement. (Sec. 901.22(A)(1).)

Monitoring of agricultural easement

Under continuing law, the Director of Agriculture and each legislative authority of a municipal corporation, board of county commissioners, or board of township trustees, upon acquiring an agricultural easement, must name an appropriate administrative officer, department, or division to supervise and enforce the easement. In addition, the act establishes monitoring requirements with respect to an agricultural easement purchased with a matching grant that

consists in whole or in part of moneys from the Clean Ohio Agricultural Easement Fund. Under the act, the recipient of such a matching grant must make an annual monitoring visit to the land that is the subject of the easement. The purpose of the visit is to ensure that no development that is prohibited by the terms of the easement has occurred or is occurring. In accordance with rules adopted under the act, the grant recipient must prepare a written annual monitoring report and submit it to the Office of Farmland Preservation in the Department of Agriculture. If necessary to enforce the terms of the easement, the grant recipient must take corrective action in accordance with those rules. (Sec. 5301.691(D).)

Installment payments

The act requires the Director to adopt rules that provide that a charitable organization, municipal corporation, township, or county has the option of purchasing agricultural easements either in installments or with a lump sum payment. The rules must include a requirement that a charitable organization, municipal corporation, township, or county negotiate with the seller of the agricultural easement concerning any installment payment terms, including the dates and amounts of payments and the interest rate on the outstanding balance. The rules also must require the Director to approve any method of payment that is undertaken in accordance with the rules. (Sec. 901.22(A)(3).)

Agricultural easements on homesteads

Under continuing law retained in part by the act, agricultural easements may be purchased only on land that is valued for purposes of real property taxation at its current value for agricultural use. The act also authorizes the purchase of agricultural easements on land that is a homestead and defines "homestead" to mean the portion of a farm on which is located a dwelling house, yard, or outbuildings such as a barn or garage. (Secs. 901.21, 5301.67, 5301.68, 5301.69, and 5301.691.)

Farmland Preservation Advisory Board

The act creates the Farmland Preservation Advisory Board to advise the Director concerning the design and implementation of an agricultural easement purchase program, the selection of applications that will be awarded matching grants for the purchase of agricultural easements, and the design and implementation of any other statewide farmland protection measures that the Director considers appropriate (sec. 901.23(A) and (B)). The Board consists of 12 voting members. Not later than 60 days after the act's effective date, the Director must appoint all of the following members to the Board:

(1) One member who is a county commissioner or a representative of a statewide organization that represents county commissioners;

(2) One member who is a township trustee or a representative of a statewide organization that represents township trustees;

(3) One representative of The Ohio State University;

(4) One representative of a national nonprofit organization dedicated to the preservation of farmland;

(5) One representative of the Natural Resources Conservation Service in the United States Department of Agriculture;

(6) One representative each of development, environmental, and planning interests; and

(7) One farmer from each of the state's four quadrants. (Sec. 901.23(A).)

Members serve at the pleasure of the Director. The act establishes staggered three-year terms, except that the term of any member who is a county commissioner or a township trustee must end when the member ceases to serve in that office. The act also enacts standard procedures related to vacancies and removal of members. (Sec. 901.23(A).)

The act requires the Executive Director of the Office of Farmland Preservation or another employee of the Department of Agriculture who is designated by the Director to serve as the nonvoting chairperson of the Board. The Director annually must designate one member of the Board to serve as its vice-chairperson. The Board may adopt bylaws governing its operation and must meet at a time when the Director, or the Director's designee, considers it appropriate in order for the Board to provide advice to the Director. (Sec. 1519.06(A).)

Serving as a member of the Board does not constitute holding a public office or position of employment under Ohio laws and does not constitute grounds for removal of public officers or employees from their offices or positions of employment (sec. 901.23(C)). A member must be reimbursed for actual and necessary expenses incurred in the discharge of duties as a member (sec. 901.23(D)).

COMMENT

Section 2o of Article VIII of the Ohio Constitution provides that the conservation purposes for which bonds may be issued include the conservation and preservation of natural areas, open spaces, farmlands, and other lands devoted to agriculture, including the acquisition of land or interests in land; the provision of state and local park and recreation facilities, and other actions that permit and enhance the availability, public use, and enjoyment of natural areas and open spaces in the state; and land, forest, water, and other natural resource management projects. Section 2o provides that the revitalization purposes include providing for and enabling the environmentally safe and productive development and use or reuse of publicly and privately owned lands, including those within urban areas, by remediation or cleanup, or planning and assessment for remediation or cleanup, of contamination, and addressing, by clearance, land acquisition or assembly, infrastructure, or otherwise, contamination and other property conditions or circumstances that may be deleterious to the public health and safety, the environment, and water and other natural resources, or that preclude or inhibit environmentally sound or economic use or reuse of the property.

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	01-30-01	p. 92
Reported, H. Energy & Environment	06-07-01	p. 635
Passed House (99-0)	06-12-01	pp. 638-641
Reported, S. Energy, Natural Resources, & Environment	06-27-01	p. 714
Passed Senate (30-2)	06-27-01	pp. 717-720
House concurred in Senate amendments (98-1)	06-28-01	pp. 728-731

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