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(As Reported by H. Energy & Environment)

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BILL 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.
- 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.
- Requires the proceeds of general obligation bonds to be deposited in the Clean Ohio Conservation Fund and used for natural resources and parks and recreation grants and for certain farmland preservation purposes.

Brownfield grants

- Creates the Clean Ohio Revitalization Fund to be administered by the Department of Development for the purpose of distributing grant moneys for brownfield cleanup or remediation projects.
- Establishes a maximum grant 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 amount to any one project.
- Creates the Clean Ohio Council to review applications for and award grants under the brownfield revitalization grant program.
- Requires grant applicants to submit applications to local integrating committees established under the Ohio Public Works Commission Law, requires the committees to prioritize and choose not more than six applications 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 recipients of grants to enter into agreements with the Clean Ohio Council, and establishes requirements for those agreements.
- 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, and requires the Director of Environmental Protection to issue or deny a covenant not to sue if one is so requested.
- Establishes filing requirements in county property records for completed and approved brownfield cleanup or remediation projects.
- Establishes a grant program for assessments, brownfield cleanups, and certain public health emergencies that is administered by the Director of Development for applicants in certain eligible areas of the state that are economically distressed and meet other economic criteria.
- 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, and any other procedures and requirements that are necessary to administer the program.

Natural Resources and Parks and Recreation Grants

- Establishes the Clean Ohio Conservation Fund in part for the purpose of distributing grants to local political subdivisions and nonprofit organizations for natural resources and parks and recreation projects.
- Requires 87.5% of the moneys in the Fund to be used 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 moneys 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.

Farmland preservation

- Requires 12.5% of the moneys in the Clean Ohio Conservation Fund to be used for farmland preservation purposes.

- Requires the term of an agricultural easement purchased with money from the Clean Ohio Conservation 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 Conservation 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 moneys from the Clean Ohio Conservation Fund.
- Requires a recipient of a matching grant that consists of moneys from the Clean Ohio Conservation 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.

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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 bill authorizes the issuance of those bonds and establishes procedures for their issuance. In addition, the bill establishes requirements for the distribution of the proceeds from the sale of those bonds. Essentially, the bill establishes three programs for the distribution of those moneys. First, the bill 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 bill by the Clean Ohio Council, which is created by the bill, 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 bill.

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 bill. 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 addressed by the bill is farmland preservation. The bill requires that proceeds of general obligation bonds also be used to fund the farmland preservation component of the bill. Specifically, 12.5% of the moneys generated from the sale of general obligation bonds will be used for farmland preservation purposes. The bill uses the existing statutory framework for purchasing agricultural easements from the Agricultural Easement Purchase Fund as the basis for the farmland preservation component of the bill.

Bonds

Revenue bonds for revitalization purposes

The bill 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 bill 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; and any gifts, grants, donations, or pledges, and receipts therefrom, available for 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 program**," below). Not more than \$200 million principal amount of revitalization obligations may be outstanding at any one time, 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 (Article VIII, § 2o, Ohio Constitution, not in the bill). The bill enacts standard procedures for the issuance of the revenue bonds and specifies that the Treasurer of State is authorized to sell the bonds at either a public or private sale (secs. 151.01(H) and 151.40).

General obligations for conservation purposes

The bill 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 outstanding at any one time, 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 (Article VIII, § 2o, Ohio Constitution, not in the bill).

Net proceeds of obligations for conservation purposes must be deposited into the Clean Ohio Conservation Fund 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 or the Ohio Public Works Commission and participating local government entities (see "**Natural resources and parks and recreation 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 current law, and the bill applies those procedures to the issuance of obligations under the bill (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 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 bill establishes the Clean Ohio Revitalization Fund to provide grants for those projects and to provide funding to the Clean Ohio Council, which the bill creates, for the purpose of administering the grant program. In general, the Director of Development is required to establish policies and requirements governing the program. All grant applications are required to be submitted to local public works integrating committees for review prior to being forwarded to the Clean Ohio Council, which awards the grants. The bill defines "brownfield" as abandoned, idled, or under-used industrial or commercial property where expansion or redevelopment is complicated by known or potential contamination by hazardous substances or petroleum.¹ (Sec. 122.65(C).) "Cleanup or remediation" is defined by the bill 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(E).)

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(N)). "Hazardous substances" means: (1) any substance identified or listed in rules adopted under the Emergency Planning Law, (2) any product registered as a pesticide under the Pesticide Law, (3) any product formerly registered as a pesticide for which the registration was suspended or canceled under the Pesticide Law, and (4) any mixture of a substance described in items (1) to (3) with a radioactive material (secs. 122.65(D) and 3746.01(F), not in the bill). "Petroleum" means oil or petroleum of any kind and in any form, including crude oil or any fraction of it, petroleum, gasoline, kerosene, fuel oil, oil sludge, oil refuse, used oil, substances or additives utilized in the refining or blending of crude petroleum or petroleum stock, natural gas, natural gas liquids, liquefied natural gas, synthetic gas usable for fuel, and mixtures of natural gas and synthetic gas (secs. 122.65(D) and 3746.01(I), not in the bill).

Clean Ohio Revitalization Fund and matching grant requirements

The bill 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 must be used to make grants for projects that have been approved by the Clean Ohio Council in accordance with the bill's provisions, except that the Council annually must transfer \$5 million from the Clean Ohio Revitalization Fund to the Clean Ohio Assistance Fund created under the bill (see below). Moneys in the Clean Ohio Revitalization Fund may be used to pay reasonable costs incurred by the Council in administering the brownfield provisions of the bill. All investment earnings of the Fund must be credited to it. Investment earnings credited to the Fund that exceed amounts required to meet estimated federal arbitrage requirements must be used to pay the costs incurred by the Department of Development and the Environmental Protection Agency under the brownfields component of the bill. The Council may transfer any remaining investment earnings in the Clean Ohio Revitalization Fund to the Clean Ohio Assistance Fund, but the balance in the latter Fund as a result of the transfer must not exceed \$10 million. The Department of Development is required to administer the Clean Ohio Revitalization Fund in accordance with the bill, policies and requirements established under the bill, and the terms of the agreements entered into by the Council and the terms of the agreements entered into by the Director of Development with grant recipients (see below). (Sec. 122.658(A).)

Grants 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 to any one project cannot exceed \$3 million. The bill 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 bill;
- (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 (sec. 122.658(B)).

The bill 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 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. (Sec. 122.658(C).)

In addition, grants awarded 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 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)).

Clean Ohio Council

The bill creates the Clean Ohio Council for the purposes of accepting and reviewing applications for grants from the Clean Ohio Revitalization Fund and awarding the grants. The Council consists of the Director of Development or the Director's designee; the Director of Environmental Protection or the Director's designee; 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 state. The bill requires all appointments to the Council to be made not later than 60 days after the effective date of the bill. (Sec. 122.651(A).)

The bill 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 bill establishes staggered two-year terms. The bill also enacts standard procedures related to vacancies and removal of members. (Sec. 122.651(B).)

The bill 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 bill'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 bill, "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 bill 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 bill provides that the Sunset Law does not apply to the Council (sec. 122.651(G)).

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

Applications for brownfield grants and public participation

An applicant seeking a grant for a brownfield cleanup or remediation project from the Clean Ohio Revitalization Fund must apply for the grant in accordance with the bill's provisions. The bill 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 (sec. 122.65(A)).³

In order to apply for a grant, 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 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 bill and in policies and requirements established under it (see below). (Sec. 164.652(A).) The bill requires the Clean Ohio Council to supply application forms to each integrating committee (sec. 164.652(C)).

The bill 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 is requested, (3) a detailed description of the contamination caused by hazardous substances or petroleum at the brownfield that includes an explanation of the source of the contamination at the property as determined by an assessment conducted in accordance with rules adopted under the bill (see below), a certified copy of the results of the assessment, and an identification of the parties that caused the contamination, if known, (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

³ For purposes of the brownfield revitalization program, "nonprofit organization" is defined by the bill 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(I)).

cleanup or remediation of the brownfield that the applicant proposes to provide as required under the bill 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, and (10) 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. Not later than 45 days prior to conducting the public meeting, the applicant must provide notice of the date and time 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 and time 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).)

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).) 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 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 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 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).) The Director of Development is required to establish policies and requirements establishing criteria to be used by integrating committees when prioritizing projects. The policies and requirements also must establish procedures that integrating 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 bill 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 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 bill (see "**Remediation and cleanup procedures**," 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 bill; funding priorities recommended by integrating committees; and any other factors that the Director considers appropriate. (Sec. 122.657(D).)

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 bill and in policies and requirements established under the bill. In addition, the Council cannot approve a project if the applicant caused or contributed to the contamination at the property. The Council also must ensure that minority and low-income communities are not disproportionately affected by the failure to thoroughly clean up and redevelop brownfields. (Sec. 122.653(B).)

Agreements for the issuance of grants

If the Council approves an application for a brownfield grant, the Council must enter into an agreement with the applicant to award a grant 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 to the applicant;
- (3) A designation of the percentage of the estimated total cost of the project for which the grant will provide funding, which cannot exceed 75% of that cost as provided under the bill (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 bill (see above);
- (5) An assurance that the applicant will clean up or remediate the brownfield to the applicable cleanup standards;
- (6) A provision for the reimbursement of grant moneys 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 bill and in policies and requirements established under the bill (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 in accordance with the bill's procedures (see above) (sec. 122.653(D)). Finally, the bill provides that a grant may be awarded 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

An applicant who has entered into an agreement with the Clean Ohio Council for a grant 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 bill defines "cleanup standards" to mean the cleanup standards that are established in rules adopted under the Voluntary Action Program Law (secs. 122.65(F) and 3746.04(B), not in the bill). In addition, the bill defines "certified professional" to mean a person certified by the Director of Environmental Protection pursuant to rules adopted under that Law (secs. 122.65(D) and 3746.04(B), not in the bill).

When 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 bill 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(L)).

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.

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 (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 the no further action letter or after notice of the nonissuance of a no further action letter. The Clean Ohio Council may request a certified professional to provide the Council with documents and data for purposes of verifying that the issuance or nonissuance by the certified professional was appropriate. In addition, if the applicant requested the certified professional to send the original no further action letter to the Director of Environmental Protection, the Director is required to have access to those documents and data for purposes of the issuance or denial of a covenant not to sue. (Sec. 122.654(D).)

Filing requirements

A no further action letter, a covenant not to sue, and any restrictions on the use of the property that are needed in order to comply with applicable cleanup standards as determined by the Director of Environmental Protection 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 bill requires all applicants to comply with this requirement. (Secs. 122.655(A) and 317.08.) In addition, the bill provides that pursuant to the Registration of Land Title Law, a no further action letter and a covenant not to sue 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)).⁴

⁴ R.C. Chapter 5309.

Program oversight policies and requirements

The bill requires the Director of Development to establish policies and requirements governing the oversight of the brownfield revitalization grant 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)).

Clean Ohio Assistance Fund

An applicant that is in an eligible area may submit an application on a form prescribed by the Director of Development to request moneys from the Clean Ohio Assistance Fund, which is created by the bill, to pay for the cost of an assessment that is required under the bill, the cleanup or remediation of a brownfield, or public health emergencies related to water supply contamination from hazardous substances or petroleum (sec. 122.656(A)).

Definitions. "Assessment" is defined by the bill 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(B)). "Eligible area" is defined by the bill 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 bill 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(P)).

Program requirements. For purposes of assisting persons in eligible areas through the Clean Ohio Assistance Fund, the Clean Ohio Council is required to transfer \$5 million annually from the Clean Ohio Revitalization Fund into the Clean Ohio Assistance Fund. As discussed above, the Council may transfer a portion of investment earnings in the Clean Ohio Revitalization Fund to the Clean Ohio Assistance Fund, but the balance in the latter Fund as a result of the transfer cannot exceed \$10 million. (Sec. 122.658(A).) The Clean Ohio Assistance Fund must be administered by the Department of Development in accordance with the bill, policies and requirements established under it, and the terms of agreements entered into for purposes of grants issued from the Fund (see below). All investment earnings of the Fund must be credited to it. (Sec. 122.658(C).)

Grants awarded from the Clean Ohio Assistance Fund must be used by an applicant in an eligible area only to pay the costs of actually conducting an

assessment, conducting a cleanup or remediation of a brownfield, or addressing a public health emergency related to water supply contamination 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 bill are not administrative costs and may be paid with moneys from grants awarded from the Clean Ohio Assistance Fund. (Sec. 122.658(F).) The Director of Development must establish policies and requirements delineating what constitutes administrative costs (sec. 122.657(G)).

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 bill requires the Director to approve or disapprove in writing applications submitted for grants from the Clean Ohio Assistance Fund (sec. 122.656(C)). The Director must approve or disapprove an application in accordance with criteria established by the Director (sec. 122.657(E)). Prior to the approval or disapproval of an application, the Director must notify the Clean Ohio Council of the pending approval or disapproval (sec. 122.656(C)). 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) (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 bill authorizes the Director to establish policies and requirements that the Director determines are necessary for the administration of assessment grants (sec. 122.657(E)).

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 program (sec. 122.657(G)).

Causes of action, rights, and liabilities

The bill states that nothing in the brownfield revitalization portion of the bill, nor any agreement entered into under that portion of the bill, 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.

Nothing in the brownfield revitalization portion of the bill affects the ability or authority of any person that is undertaking or has undertaken investigation or remediation activities at a brownfield under the bill to seek cost recovery or contributions from or any relief available against any person who may have liability with respect to the brownfield.

Decisions of the Clean Ohio Council, integrating committees, the Environmental Protection Agency, and the Department of Development concerning applications for grant funding under the brownfield revitalization portion of the bill are effective without a prior hearing under the Administrative Procedure Act and are not appealable under that Act or any other provision of Ohio law.

Finally, nothing in the brownfield revitalization portion of the bill creates or can be construed as creating a cause of action against any member, officer, or employee of the Clean Ohio Council, integrating committees, the Environmental Protection Agency, or the Department of Development or a substantive legal right in favor of any applicant for a grant under that portion of the bill. (Sec. 122.659.)

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 bill 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 bill are funded from moneys deposited into the Clean Ohio Conservation Fund, which is created by the bill. The net proceeds of general obligations issued and sold by the Ohio Public Facilities Commission must be deposited in the Fund (see above). Investment earnings of the Fund must be credited to it. Investment earnings credited to the Fund that exceed the amounts required to meet estimated federal arbitrage rebate requirements must be used to pay costs incurred by the Ohio Public Works Commission in administering the natural resources component of the bill. (Sec. 164.27(A).)

Of the moneys deposited in the Fund, 87.5% must be used to make grants to local political subdivisions and nonprofit organizations for natural resources and parks and recreation projects. The remaining 12.5% must be used for farmland preservation purposes upon the request of the Director of Agriculture (see "**Farmland preservation**," below). The Clean Ohio Conservation Fund must be administered by the Ohio Public Works Commission. (Sec. 164.27(B).)

Moneys for natural resources and parks and recreation projects are distributed under the bill 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. Moneys are allocated under the bill 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 moneys 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 \$43,750,000, the district receives $\frac{3}{4}$ of 1% of all moneys allocated for all districts, that is, \$328,125.

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

A grant that is awarded under the bill 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, the state, 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. (Sec. 164.27(D).)

The director of the Commission must notify the Director of Budget and Management of the amounts allocated pursuant to the bill, 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(E).)

Grants awarded under the natural resources component of the bill 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 bill and must not be used by a local political subdivision or nonprofit organization to pay any administrative costs incurred by the local political subdivision or nonprofit organization (sec. 164.27(F)). 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 bill 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 bill adds the Director of Natural Resources to the Commission as a nonvoting, ex officio member (sec. 164.02(A)). In administering the program, the bill 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 bill, "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 bill 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 bill (sec. 164.20(C)). "Nonprofit organization" means an organization that has as one of its purposes effectuating the preservation or restoration of natural resources or the preservation, creation, or rehabilitation of parks and recreation areas and that is exempt from federal income taxation pursuant to federal law (sec. 164.20(B)).

Natural resources assistance councils

Under the bill, 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 of the council 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, an organization with a primary interest in the development of recreational trails, 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 bill establishes standard appointment procedures and staggered three-year terms of office for members of the council. (Sec. 164.21(A).)

Under the bill, 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 bill 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 bill 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 bill for projects that propose to do any 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, avoidance of the effects of sprawl, 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 public transportation and 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, especially in communities that are experiencing sprawl; 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).)

(3) Construct or enhance trails for walking, hiking, bicycling, horseback riding, or any other recreational purpose that is beneficial to the community in which a trail is to be constructed or enhanced. Grants may be used for the planning and development of a trail and the acquisition of land for the trail. Projects related to trail construction and enhancement must emphasize the following:

- (a) Synchronization with the statewide trail plan;
- (b) Complete regional systems and links to the statewide trail system;
- (c) A combination of funds from various state agencies;
- (d) The provision of links in urban areas that support commuter access and show economic impact on local communities;
- (e) The linkage of population centers with public outdoor recreation areas and facilities;
- (f) The purchase of rail lines that are linked to the statewide trail plan; and
- (g) The preservation of natural corridors. (Sec. 164.22(C).)

Grant moneys may be used for incidental costs related to projects that are eligible for funding under the bill, 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 bill 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 moneys 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, the state, 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;

(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, and local business groups;

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

(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) A copy of a resolution supporting the project from the county, municipal corporation, or township in which the proposed project is to be conducted;

(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 bill. (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).)

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(C).)

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 bill. 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, stream and watershed, or trails) (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, 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 bill;

(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 bill 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 bill. 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 bill (see above). If the council approves an application, it must submit a copy of the application, 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 bill (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 bill 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.)

Appealability of decisions and rights to a cause of action

Under the bill, decisions of the Ohio Public Works Commission, district public works integrating committees, and natural resources assistance councils concerning applications for natural resources and parks and recreation grants are effective without a prior hearing under the Administrative Procedure Act and are not appealable under that Act or under any other provision of state law (sec. 164.28(A)).

Nothing in the bill creates or may be construed as creating a cause of action against any member, officer, or employee of the Ohio Public Works Commission, district public works integrating committees, or natural resources assistance councils or a substantive legal right in favor of any applicant for a natural resources and parks and recreation grant (sec. 164.28(B)).

Farmland preservation

Background

Current 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. Current 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 current 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 current law (see below).

Agricultural Easement Purchase Fund

Current law creates the Agricultural Easement Purchase 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(E).) The bill requires 12.5% of the moneys deposited in the Clean Ohio Conservation Fund (see above) to be used by the Director of Agriculture for the same purposes as the Agricultural Easement Purchase Fund. Moneys from the Clean Ohio Conservation Fund must be used for those purposes, when needed, upon the request of and as directed by the Director of Agriculture. (Sec. 164.27(B).) In addition, the bill 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(F)).

Size of matching grant

The bill 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 Conservation Fund may provide up to 75% of the value of the agricultural easement. The bill 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 bill, the value of an agricultural easement is to be determined by a general real estate appraiser who is certified under current law. The bill 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 bill

Under current 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 bill 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 Conservation 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 that is the subject of the application to other agricultural land 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 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 current 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 bill 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 Conservation Fund. Under the bill, 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 bill, 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 bill 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 current law, 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 bill 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.)

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
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