



**S.B. 300**

124th General Assembly  
(As Introduced)

**Sen. Armbruster**

---

**BILL SUMMARY**

- Establishes the Innovation Ohio Loan Program in the Department of Development.
- Authorizes the Director of Development, subject to the approval of the Controlling Board, to make loans and loan guarantees to pay the allowable innovation costs of eligible innovation projects in targeted innovation industry sectors.
- Permits the Director of Development to acquire innovation property (e.g., software, inventory, licenses, contract rights, patents and patent applications, trademarks) and to convey such innovation property to any governmental agency or person without competitive bidding, and upon whatever terms, conditions, and manner the Director considers appropriate.
- Establishes administrative procedures and criteria for assistance for the Innovation Ohio Loan Program that are similar, but not identical, to those of the Facilities Establishment Fund Law.
- Specifies that the amount of an Innovation Ohio loan may not exceed 90% of the total costs of an eligible innovation project, and that the amount to be guaranteed under the program may not exceed 90% of the allowable innovation costs of the eligible innovation project.
- Permits reimbursement under the Innovation Ohio Loan Program of the costs of creating and protecting intangible property, such as a patent, copyright, or trademark, that is related to an eligible innovation project, or a product or service related to an eligible innovation project.

- Exempts the construction of project facilities built under the program from the Prevailing Wage Law.
- Creates the Innovation Ohio Loan Fund and the Innovation Ohio Loan Guarantee Fund which are in the custody of the Treasurer of State, but are not part of the state treasury and are not comprised of moneys raised by taxation.
- Permits the issuance of additional obligations (revenue bonds) according to the procedures of the Facilities Establishment Fund Law to pay the costs of the program.
- Modifies the maximum aggregate amount of the unpaid principal of loans and loan guarantees which may be outstanding under the Facilities Establishment Law by adding the unpaid principal of loans and loan guarantees made under the Innovation Ohio Loan Program, but increases the maximum aggregate amount from \$500 million to \$700 million, of which no more than \$200 million may be comprised of loans and loan guarantees made under the Innovation Ohio Loan Program.
- Removes the requirement that at least 50% of the original obligations issued under the Facilities Establishment Fund Law must be reserved for and applied to assist small businesses.
- Permits the Director of Development to take an interest in property to ensure that innovation property is used in Ohio, products associated with innovation property are used in Ohio, and services associated with innovation property are delivered by persons employed within Ohio.

---

## TABLE OF CONTENTS

Introduction .....	3
Legislative declaration of intent .....	4
Allowable costs of eligible innovation projects.....	4
Eligible innovation project.....	5
Allowable innovation costs.....	5
Establishment of new funds .....	6
Innovation Ohio Loan Fund.....	6
Exceptions to the deposit of funds in the Innovation Ohio Loan Fund .....	7
Issuance of obligations .....	7
Aggregate limits on the issuance of obligations .....	7

Aggregate limits on the guaranteed portion of loans and on loans made .....	8
Reservation of at least 50% of original obligations for small business.....	8
Amounts required in the Innovation Ohio Loan Guarantee Fund.....	8
Inducements available under the Innovation Ohio Loan Fund Program.....	9
Innovation property .....	10
Director may ensure that innovation property is used in Ohio.....	10
Innovation financial assistance .....	10
General criteria to determine eligibility for innovation financial assistance .....	11
Development Finance Advisory Council .....	12
Private sector financial records not open to public inspection.....	12
Specific criteria for loan guarantees.....	12
Contract of guarantee.....	13
Rights of guaranteed parties.....	14
Specific criteria for loans .....	15
Determinations of the Director are conclusive .....	16
Relocation of an eligible innovation project.....	16
Other definitions modified by the bill.....	17
Allowable costs.....	17
Governmental action.....	18
Project facilities.....	18
Differences between the Facilities Establishment Fund Law and the Innovation Ohio Loan Program.....	18
Declaration of legislative intent and purpose .....	19
Utilization of innovation property in Ohio.....	19
Recommendation by a regional economic development entity.....	19
Prevailing wage .....	19
General eligibility for assistance .....	19
Eligibility for a loan guarantee .....	21
Eligibility for a loan.....	21

---

## CONTENT AND OPERATION

### Introduction

The bill establishes the Innovation Ohio Loan Program in the Department of Development. The program is operated in a manner that is similar to the existing Facilities Establishment Fund Law (R.C. Chapter 166.). Under the new program, the bill authorizes the Director of Development to make loans and loan guarantees to persons to pay the "allowable innovation costs" of "eligible innovation projects." The release of funds is subject to the approval of the Controlling Board. Program assistance is limited to eligible innovation projects involving the use of technology in "targeted innovation industry sectors," which are industry sectors involving the production or use of advanced materials,

instruments, controls and electronics, power and propulsion, biosciences, information technology, or other sectors designated by the Director of Development (sec 166.01(N)).

The program is funded by the Innovation Ohio Loan Fund and the Innovation Ohio Loan Guarantee Fund, which are established by the bill and are in the custody of the Treasurer of State. These two funds receive moneys from the proceeds of bond sales that are repaid with state liquor profits or repayments of program loans in the same manner as the Facilities Establishment Fund and Loan Guarantee Fund. The use of revenue bond proceeds for economic development is authorized by Section 13, Article VIII of the Ohio Constitution, if the purposes are consistent with that section (see **COMMENT**). The purposes for which assistance may be granted under the Innovation Ohio Loan Program are more expansive than those of the Facilities Establishment Fund Law in that they include payment for intangible property such as patents. Also, the administrative procedures utilized in the two programs are not identical (see "*Differences between the Facilities Establishment Fund Law and the Innovation Ohio Loan Program*," below). The bill increases the combined total amount of the unpaid principal of loans and loan guarantees that the Director may make under the Innovation Ohio Loan Guarantee Fund Law and the Facilities Establishment Fund Law from \$500 million to \$700 million.

#### *Legislative declaration of intent*

The bill includes a legislative declaration of intent that states that in order to maintain and enhance the competitiveness of the Ohio economy and to improve the economic welfare of all of the people of the state, it is necessary to ensure that high-value jobs based on research, technology, and innovation are available to the people of the state. The bill also includes a declaration of a legislative finding that the attraction of high-value jobs and their presence in this state will materially contribute to the economic welfare of all of the people of the state. Accordingly, the bill provides that it is the public policy of the state to assist and facilitate the establishment or development of eligible innovation projects, or to assist and cooperate with any governmental agency in achieving that purpose. (Sec. 166.12(A).)

#### *Allowable costs of eligible innovation projects*

The bill permits the Director to enter into contracts to (1) guarantee the repayment or payment of the unpaid principal amount of loans made to pay the "allowable innovation costs of eligible innovation projects" and (2) make loans for this purpose (secs. 166.15(A) and 166.16(A)).

### **Eligible innovation project**

The bill creates a new term, "eligible innovation project" which includes:

- An "eligible project," as currently defined for the Facilities Establishment Fund Law, including any "project facilities" (e.g., buildings, equipment, improvements, and other property) associated with an eligible innovation project (see "**Other definitions modified by the bill**" for a definition of "project facilities"); and
- All tangible and intangible property related to a new product or process based on new technology or the creative application of existing technology, including research and development, product or process testing, quality control, market research, and related activities, which is to be acquired, established, expanded, remodeled, rehabilitated, or modernized for industry, commerce, distribution, or research, or any combination thereof, the operation of which, alone or in conjunction with other eligible projects, eligible innovation projects, or innovation property, will create new jobs or preserve existing jobs and employment opportunities and improve the economic welfare of the people of the state. (Sec. 166.01(C).)

### **Allowable innovation costs**

The bill also creates a new term, "allowable innovation costs" which includes the following *to the extent that such expenditures could be capitalized under then-applicable generally accepted accounting principles*:<sup>1</sup>

- (1) "Allowable costs" (see "**Other definitions modified by the bill**") of eligible innovation projects;
- (2) Research and development of eligible innovation projects;
- (3) Obtaining or creating any requisite software or computer hardware related to an eligible innovation project or the products or services associated therewith;

---

<sup>1</sup> *It appears, though it is not certain, that the phrase "all to the extent that such expenditures could be capitalized under then-applicable generally accepted accounting principles" modifies all of the listed elements of the definition, rather than the phrase immediately preceding it regarding intellectual property. If this is not the case, then the definition may permit the reimbursement for expenses such as labor or materials, which would pose a potential conflict with Section 13, Article VIII of the Ohio Constitution (see COMMENT).*

(4) Testing (including, without limitation, quality control activities necessary for initial production), perfecting, and marketing of such products and services;

(5) Creating and protecting intellectual property related to an eligible innovation project or any products or services related thereto, including costs of securing appropriate patent, trademark, trade secret, trade dress, copyright, or other form of intellectual property protection for an eligible innovation project or related products and services; and

(6) Reimbursement of moneys advanced or applied by any governmental agency or other person for allowable innovation costs. (Sec. 166.01(B).)

### **Establishment of new funds**

The bill creates the Innovation Ohio Loan Fund and the Innovation Ohio Loan Guarantee Fund as special revenue funds and trust funds that are in the custody of the Treasurer of State but are not part of the state treasury. The Treasurer serves as the agent of the Director in making withdrawals and deposits and for the maintenance of records related to the funds (secs. 166.15(F) and 166.16(G)). The funds consist of all grants, gifts, and contributions of moneys or rights to moneys designated for or deposited in such funds, and all moneys and rights to moneys designated for and transferred to such funds, including moneys received from the issuance of revenue bonds. Neither fund may be comprised, in any part, of moneys raised by taxation. (Secs. 166.15(D) and 166.16(D).)

### **Innovation Ohio Loan Fund**

In addition, except as noted below, the bill requires the Innovation Ohio Loan Fund to receive moneys from: (1) funds received by the state from the repayment of loans made from the Fund, (2) the recovery of loan guarantees, including interest, made under the Innovation Ohio Loan Fund Law, and (3) the sale, lease, or other disposition of property acquired or constructed from moneys in the Fund derived from the proceeds of the sale of obligations. Such moneys must be used as provided in the law governing the Innovation Ohio Loan Program and the Facilities Establishment Fund Law. (Sec. 166.16(H)(1).)

Investment income from moneys in the Innovation Ohio Loan Fund must be deposited in that Fund. The Treasurer of State is permitted to withdraw, without appropriation, amounts of investment income required to be rebated to the federal government in order to maintain the exemption from federal taxation of interest on obligations issued under the Innovation Ohio Loan Fund Law. (Sec. 166.16(H)(3).)

### **Exceptions to the deposit of funds in the Innovation Ohio Loan Fund**

As an exception to the above, the bill requires amounts recovered on loan guarantees from the Innovation Ohio Loan Guarantee Fund to be deposited to the credit of that Fund to the extent necessary to restore that Fund to the level required by any guarantee contract or the amount required by law. (Sec. 166.16(H)(2).)

In addition, the bill permits moneys from loan repayments, recovery of loan guarantees, and the disposition of property to be held in separate accounts within the Innovation Ohio Loan Fund or in the Bond Service Fund and pledged to the security of obligations, or applied to the payment of bond service charges without need for appropriation, or released from such pledges and transferred to the Innovation Ohio Loan Fund upon the written direction of the Director pursuant to the requirements of bond proceedings. (Sec. 166.16(H)(3).)

### **Issuance of obligations**

The bill authorizes the issuance of obligations for the Innovation Ohio Loan Fund and the Innovation Ohio Loan Guarantee Fund upon the certification by the Director to the issuing authority of the amount of moneys needed in the funds. The obligations are issued according to procedures utilized in current law for the Facilities Establishment Fund. The bill also authorizes the costs of services associated with the issuance of obligations to be paid out of moneys in the Innovation Ohio Loan Fund. The obligations issued for the Innovation Ohio Loan Guarantee Fund may be sold at private sale without publication of notice. (Sec. 166.08(B).)

### **Aggregate limits on the issuance of obligations**

Current law establishes a \$300 million limit for the aggregate principal amount of obligations that may be issued for which bond service charges are repaid with liquor profits. To this limit are added the following:

- (1) The principal amount of any such obligations retired by payment;
- (2) The amounts held for the payment of the principal amount of any such obligations outstanding;
- (3) Amounts held in special funds held as reserves to meet bond service charges; and
- (4) Amount of obligations issued to provide moneys required to meet payments from the Loan Guarantee Fund.

This aggregate limit must be reduced by 4% of the unpaid principal amount of loan repayments guaranteed under the Loan Guarantee Fund. (Sec. 166.11(A).)

The bill adds that the debt limit must be increased by the amounts of obligations issued to provide moneys required to meet payments from the Innovation Ohio Loan Guarantee Fund. The bill also specifies, however, that the limit must be reduced by the amount by which 4% of the unpaid principal amount of loan repayments guaranteed under the Innovation Ohio Loan Guarantee Program exceeds the amount in the Innovation Ohio Loan Guarantee Fund. (Sec. 166.11(A).)

**Aggregate limits on the guaranteed portion of loans and on loans made**

Current law provides that the aggregate amount of the guaranteed portion of the unpaid principal of loans guaranteed under the Facilities Establishment Fund Law, and the unpaid principal of loans made under that law, may not at any time exceed \$500 million. However, this limitation does not apply to loans made with proceeds from the issuance and sale of obligations that are not serviced by liquor profits.

The bill increases the aggregate limit to \$700 million and makes loans and loan guarantees made under the Innovation Ohio Loan Program also subject to this limit along with loans and loan guarantees made under the Facilities Establishment Law. In addition, the bill specifies that of the \$700 million aggregate limit, the aggregate amount of the guaranteed portion of the unpaid principal of loans guaranteed by the Facilities Establishment Fund Law and by the Innovation Ohio Loan Program Law must not exceed \$200 million at any time. (Sec. 166.11(B).)

**Reservation of at least 50% of original obligations for small business**

Under current law, at least 50% of the original loan and loan guarantee amounts authorized under the Facilities Establishment Fund Law must be reserved for and applied to assist small business concerns that have not more than 400 employees, not including new employment generated by an eligible project to be assisted under the Facilities Establishment Fund Law. The bill removes this requirement. (Sec. 166.11(C).)

**Amounts required in the Innovation Ohio Loan Guarantee Fund**

Before the Director's entry into a contract for a guarantee payable from the Innovation Ohio Loan Guarantee Fund, the bill requires the Treasurer of State to transfer an amount equal to 10% of the principal amount of indebtedness to be guaranteed from the Innovation Ohio Loan Fund to the Innovation Ohio Loan Guarantee Fund. The Treasurer must maintain an amount in the Innovation Ohio

Loan Guarantee Fund equal to 10% of the outstanding principal amount of all guarantees made. If the amounts available in the Fund are inadequate to meet the requirements of a guarantee the Treasurer must transfer, without appropriation and without further action by the Director, necessary amounts to the Fund from moneys representing gross profits payable to the state from the sale of liquor. The provisions of the guarantee determine the manner and the times of disbursement. (Sec. 166.15(F).)

**Inducements available under the Innovation Ohio Loan Fund Program**

In order to implement the Innovation Ohio Loan Fund Law, the bill permits the Director to exercise the following powers:<sup>2</sup>

(1) After consultation with appropriate governmental agencies, to enter into agreements with persons engaged in industry, commerce, distribution, or research to develop eligible innovation projects and make provisions for project facilities and governmental actions;

(2) To provide for loan guarantees from the Innovation Ohio Loan Guarantee Fund and loans from the Innovation Ohio Loan Fund;

(3) Subject to the release of moneys by the Controlling Board from the Innovation Ohio Loan Fund, to contract to reimburse "allowable innovation costs" of eligible innovation projects, to contract for labor and materials needed for such projects, and to contract for the operation of eligible innovation projects;

(4) Subject to release of moneys by the Controlling Board from the Innovation Ohio Loan Fund, acquire or contract to acquire by gift, exchange, or purchase, including by purchase options, "innovation property" (see below), and to convey or dispose of innovation property without competitive bidding and upon such terms and conditions and manner of consideration that the Director determines to be appropriate to satisfy the objectives of the program;

(5) Retain the services of or employ financial consultants, appraisers, consulting engineers, superintendents, managers, construction and accounting experts, attorneys, and employees, agents, and independent contractors as are necessary in his judgment and fix the compensation for their services;

(6) Receive and accept from any person grants, gifts, and contributions of money, property, labor, and other things of value, to be held, used and applied only for the purpose for which such grants, gifts, and contributions are made;

---

<sup>2</sup> *These powers are similar to those exercised by the Director under the Facilities Establishment Fund Law.*

(7) Enter into appropriate arrangements and agreements with any governmental agency for the taking or provision by that governmental agency of any governmental action;

(8) Do all other acts and enter into contracts and execute all instruments necessary or appropriate to carry out the provisions of the Innovation Ohio Loan Fund Law; and

(9) Adopt rules to implement any of the provisions of the Innovation Ohio Loan Fund Law applicable to the Director. (Sec. 166.12(B).)

The bill permits any governmental agency to undertake on behalf and at the request of the Director the third, fourth, and fifth functions listed above. (Sec. 166.02(F).)

### **Innovation property**

The bill establishes a definition of innovation property, which includes real and personal property and also includes software, inventory, licenses, contract rights, goodwill, intellectual property, including, without limitation, patents, patent applications, trademarks and service marks, trade secrets, and other tangible and intangible property, and any rights and interests in or connection to the foregoing. (Sec. 166.01(I).)

### **Director may ensure that innovation property is used in Ohio**

Under the bill, the Director is permitted to take an interest in property, including innovation property, by mortgage, security interests, assignments, exclusive or non-exclusive licenses, or other means, to ensure any of the following:

(1) That innovation property is used in Ohio;

(2) That products associated with innovation property are produced by persons employed within Ohio;

(3) That services associated with innovation property are delivered by persons employed within Ohio. (Sec. 166.12(B)(9).)

### **Innovation financial assistance**

The bill creates a new term, "innovation financial assistance," which includes the inducements described above, as well as innovation Ohio loan guarantees and innovation Ohio loans. (Sec. 166.01(H).)

**General criteria to determine eligibility for innovation financial assistance**

The bill requires the Director to consider the following criteria in determining the eligible innovation projects to be assisted and the nature, amount, and terms of innovation financial assistance to be provided for an eligible project under the Innovation Ohio Loan Program:

(1) The number of jobs to be created or preserved by the eligible innovation project, directly or indirectly;

(2) Payrolls, and the taxes generated, at both state and local levels, by the eligible project and by or in connection with the eligible innovation project and the employment created or preserved by or in connection with the eligible innovation project;

(3) The size, nature, and cost of the eligible innovation project, including the prospect of the eligible innovation project providing long-term jobs in enterprises consistent with the changing economics of the state and the nation;

(4) The needs of any private sector enterprise to be assisted;

(5) The amount and kind of assistance, if any, to be provided to the private sector enterprise by other governmental agencies through tax exemption or abatement, financing assistance with industrial development bonds, and otherwise, with respect to the eligible innovation project or with respect to any providers of innovation property to be included as part of the eligible innovation project;

(6) The likelihood of successful implementation of the proposed eligible innovation project;

(7) Whether the eligible innovation project involves the use of technology in a targeted innovation industry sector. (Sec. 166.14(A)(1).)

The benefits to the local area, including taxes, jobs, and reduced unemployment and reduced welfare costs, among others, may be accorded value in leasing or sales of project facilities and in loan and guarantee arrangements. (Sec. 166.14(A)(2).)

In making determinations one through seven above, the bill permits the Director to consider the effect of an eligible innovation project upon any entity engaged to provide innovation property to be acquired, leased, or licensed in connection with such assistance. (Sec. 166.14(A)(3).)

### **Development Finance Advisory Council**

The bill requires the Director to submit information to the Development Finance Advisory Council (DFAC) for DFAC's use in making a recommendation as to the appropriateness of the proposed innovation financial assistance. The information that the Director must submit includes data pertinent to the criteria for eligibility, the terms of the proposed innovation financial assistance, and other relevant information that the DFAC may request. (Sec. 166.14(B).)

DFAC may revise its recommendations to reflect any changes in the proposed assistance submitted by the Director. DFAC must submit its recommendations as to appropriateness of the proposed innovation financial assistance to the Controlling Board. (Sec. 166.14(C).)

### **Private sector financial records not open to public inspection**

Under the bill, financial statements and other data submitted to the Director, the DFAC, or the Controlling Board by any private sector person in connection with innovation financial assistance under the program, or any information taken from such statements or data for any purpose, are not open to public inspection. The bill permits the DFAC, in considering confidential information in connection with innovation financial assistance, to close the meeting during such consideration by unanimous vote of all members present (sec. 121.22(E), not in the bill). (Sec. 166.14(D).)

### **Specific criteria for loan guarantees**

The bill permits the Director to enter into contracts to guarantee the repayment or payment of not more than 90% of the unpaid principal amount of loans made, including bonds, notes, or other certificates issued or given to provide funds, to pay allowable innovation costs of eligible innovation projects. Such guarantees must be secured solely by and payable solely from the Innovation Ohio Loan Guarantee Fund and from the moneys representing gross profits payable to the state from the sale of spirituous liquor. The bill stipulates that such guarantees do not constitute general obligations of the state or of any political subdivision, and moneys raised by taxation must not be obligated or pledged for the payment of the guarantees.

Before guaranteeing any such repayments or payments the bill requires the Director to make all of the following determinations:

- (1) The project is an eligible innovation project and is economically sound;
- (2) The principal amount to be guaranteed does not exceed 90% of the allowable innovation costs of the eligible innovation project as determined by the

Director. The bill permits the Director to engage an independent engineer, architect, appraiser or other professional to make the determination, pursuant to a contract to be paid solely from the Innovation Ohio Loan Fund, subject to the approval of the Controlling Board.

(3) The principal amount to be guaranteed has a satisfactory maturity date or dates, which in no case shall be later than 25 years from the effective date of the guarantee;

(4) The principal obligor, or primary guarantor, is responsible and is reasonably expected to be able to meet the payments under the loan, bonds, notes, or other certificates;

(5) The loan or documents pertaining to the bonds, notes, or other certificates to be guaranteed contains amortization provisions satisfactory to the Director requiring periodic payments or sinking fund or similar deposits by the principal obligor, and is in such form and contains such terms and provisions for the protection of the lenders as are generally consistent with commercial practice, including, where applicable, provisions with respect to property insurance, repairs, alterations, payment of taxes and assessments, delinquency charges, default remedies, acceleration of maturity, prior, additional and secondary liens, and other matters as the Director may approve. (Sec. 166.15(B).)

### *Contract of guarantee*

The bill allows the contract of guarantee to specify any of the following provisions:

- The conditions of, time for, and manner of fulfillment of the guarantee commitment;
- The subrogation of the state to the rights of the parties guaranteed and exercise of such parties' rights by the state;
- Giving the state the options of making payment of the principal amount guaranteed in one or more installments and, if deferred, to pay interest thereon from the Innovation Ohio Loan Guarantee Fund and pledged receipts of the gross profit on the sale of liquor;
- Any other terms or conditions customary to such guarantees and as the Director may approve;
- Securing the guarantee in a manner consistent with the Innovation Ohio Loan Program Law;

- Covenants on behalf of the state for the maintenance of the Innovation Ohio Loan Guarantee Fund and of receipts to it, including covenants on behalf of the state to issue obligations to provide moneys to the Innovation Ohio Loan Guarantee Fund to fulfill such guarantees and covenants authorized by law in bond proceedings;<sup>3</sup>
- Covenants restricting the aggregate amount of guarantees that may be contracted for using the Innovation Ohio Loan Guarantee Fund and restricting the obligations that may be issued by the state that are repaid with pledged receipts from the sale of spiritous liquor, and terms pertinent to either, to better secure the parties guaranteed. (Sec. 166.15(C).)

The bill also allows the Director to fix service charges for making a guarantee. The time, place, amount and manner of payment are determined by the Director (sec. 166.15(E)).

#### **Rights of guaranteed parties**

The bill provides that any guaranteed parties, except to the extent that their rights are restricted by the guarantee documents, may by any suitable form of legal proceedings, protect and enforce any rights given to them by Ohio law or granted by the guarantee or guarantee documents. These rights include the right to compel the performance of all duties of the Director and the Treasurer of State that are required by the law pertaining to the guarantees made under the Innovation Ohio Loan Program or in the guarantee or guarantee documents. In the event of default with respect to the payment of any guarantees, a guaranteed party may apply to a court to appoint a receiver to receive and administer the moneys pledged to the guarantee with full power to pay, and to provide for payment of, the guarantee, and with such powers, subject to the direction of the court, as are accorded receivers in general equity cases, excluding any power to pledge or apply additional revenues or receipts or other income or moneys of the state or governmental agencies of the state to the payment of the guarantee.

---

<sup>3</sup> *The issuing authority is permitted to covenant that the state will maintain statutory authority for and cause to be charged and collected wholesale and retail prices for spiritous liquor sold by the state or its agents so that pledged receipts are sufficient in amount to meet bond service charges, and the establishment and maintenance of any reserves and other requirements provided for in the bond proceedings, as necessary (sec. 166.08(R)(1)).*

The bill establishes that each duty of the Director and the Treasurer of State and their officers and employees, and of each governmental agency and its officers, members, or employees, required or undertaken according to the law pertaining to guarantees made under the Innovation Ohio Loan Program Law or a guarantee made under that Law, is a duty of those individuals for which a court may issue a writ of mandamus compelling those individuals to perform the duty (sec. 2731.01, not in the bill). (Sec. 166.15(G).)

The bill exempts the individuals who are the Director and Treasurer of State, or their officers or employees, from liability in their personal capacities on any guarantees or contracts to make guarantees under the Innovation Ohio Loan Program. (Sec. 166.15(G).)

### **Specific criteria for loans**

The bill permits the Director, with the approval of the Controlling Board and subject to the other applicable provisions governing the Innovation Ohio Loan Program, to lend moneys in the Innovation Ohio Loan Fund to persons for the purpose of paying allowable costs of an eligible project if the Director determines all of the following:

- (1) The project is an eligible project and is economically sound;
- (2) The borrower is unable to finance the necessary allowable costs through ordinary financial channels upon comparable terms;
- (3) The amount to be lent from the Innovation Ohio Loan Fund will not exceed 90% of the total costs of the eligible innovation project;
- (4) The repayment of the loan from the Innovation Ohio Loan Fund will be secured by a mortgage, lien, assignment, pledge, or other interest in property or innovation property at a level of priority and value as the Director may determine necessary; in making this determination, the Director may take into account the value of any rights granted by the borrower to the Director to control the use of any property or innovation property of the borrower under the circumstances described in the loan documents. (Sec. 166.16(A).)

The bill allows the Director to fix fees, charges, rates of interest, times of payment of interest and principal, and other terms, conditions, and provisions of and security for loans made from the Innovation Ohio Loan Fund. The moneys used in making such loans shall be disbursed from the Fund upon order of the Director. The Director may take actions necessary or appropriate to collect or otherwise deal with a loan. (Sec. 166.16(C) and (E).)

### **Determinations of the Director are conclusive**

The bill provides that the Director's determinations that certain facilities constitute eligible innovation projects, that facilities are project facilities, that costs of such facilities are allowable innovation costs, and all other determinations relevant thereto or to an action taken or agreement entered into are conclusive for purposes of the validity and enforceability of rights of parties arising from actions taken and agreements entered into under this chapter (sec. 166.12(C)). Moreover, the Director must set forth a determination that the assistance conforms to the law governing the Innovation Ohio Loan Program in any assistance agreement. The determination must be submitted to the DFAC for when it considers a request for innovation financial assistance, and to the Controlling Board when it considers a loan made from the Innovation Ohio Loan Fund. The Director's determination is conclusive for the purposes of the validity and enforceability of the agreement and any loans, loan guarantees, or other assistance under the Innovation Ohio Loan Fund Law. (Sec. 166.13(A).)

With respect to loan guarantees, the bill provides that the determinations of the Director are conclusive for purposes of the validity of a guarantee evidenced by a contract signed by the Director, and such guarantee shall be incontestable as to moneys advanced under loans to which such guarantees are by their terms applicable (sec. 166.15(B)). With respect to loans, the bill similarly provides that the determinations of the Director are conclusive for purposes of the validity of a loan commitment evidenced by a loan agreement signed by the Director (sec. 166.16(B)).

### **Relocation of an eligible innovation project**

The bill permits an applicant for assistance under the Innovation Ohio Loan Program to request assistance for the purpose of relocating an eligible innovation project. A request for assistance triggers a notice requirement. Under the bill, whenever a person applies for financial assistance and the project for which assistance is requested is to relocate an eligible innovation project that is currently being operated by the person and that is located in another county, municipal corporation, or township, the Director is required to provide written notification to the appropriate local governmental bodies and state officials.<sup>4</sup> The appropriate

---

<sup>4</sup> Under the bill, "appropriate local governmental bodies means": (a) the boards of county commissioners or legislative authorities of the county in which the project for which assistance is requested is located and of the county in which the facility to be replaced is located, (b) the legislative authority of the municipal corporation or the board of township trustees of the township in which the project for which assistance is requested is located, and (c) the legislative authority of the municipal corporation or the board of township trustees of the township in which the facility to be replaced is located.

state officials are the state representative and state senator in whose districts the project for which assistance is requested is located, and the state representative and state senator in whose districts the facility to be replaced is located.

The notification is required to contain the following information:

- (1) The name of the person applying for financial assistance;
- (2) The county, and the municipal corporation or township, in which the project for which assistance is requested is located; and
- (3) The county, and the municipal corporation or township, in which the facility to be replaced is located.

The Director must provide the written notification to the appropriate local governmental bodies and state officials so that they receive the notification at least five days before the meeting at which the DFAC considers the request for innovation financial assistance. (Sec. 166.13(B) and (C).)

### **Other definitions modified by the bill**

#### **Allowable costs**

Under existing law, for purposes of the Facilities Establishment Fund, "allowable costs" are defined as all or part of the costs of:

- (1) Acquiring, constructing, reconstructing, rehabilitating, renovating, enlarging, improving, equipping, or furnishing "project facilities," where project facilities mean buildings, structures, other improvements, equipment, and other property, excluding small tools, supplies, and inventory, that are all, part of, serving or incidental to an eligible project, including public capital improvements;
- (2) Site clearance and preparation;
- (3) Supplementing and relocating public capital improvements or utility facilities;
- (4) Designs, plans, specifications, surveys, studies, and estimates of costs, expenses necessary or incidental to determining the feasibility or practicability of assisting an eligible project or providing project facilities;
- (5) Architectural, engineering, and legal services fees and expenses;
- (6) The costs of conducting any other activities as part of a voluntary action (a voluntary action means environmental site remediation under R.C. Chapter 3746.);

(7) Such other expenses as may be necessary or incidental to the establishment or development of an eligible project; and

(8) Reimbursement of moneys advanced or applied by any governmental agency or other person for allowable costs.

The bill modifies the definition of allowable costs and utilizes it as an element of "allowable innovation costs" as noted under the section titled "**Allowable innovation costs.**" The bill adds the costs of "eligible innovation projects" to the first and seventh activity listed above, and adds the costs of an eligible innovation project or the costs of providing facilities related to an eligible innovation project to the fourth activity listed above. (Sec. 166.01(A).)

### **Governmental action**

"Governmental action," under current law, for purposes of the Facilities Establishment Fund, means any action by a governmental agency relating to the establishment, development, or operation of an eligible project and project facilities that the governmental agency has authority to take or provide for the purpose under law, including, but not limited to, actions relating to contracts and agreements, zoning, building, permits, acquisition and disposition of property, public capital improvements, utility and transportation service, taxation, employee recruitment and training, and liaison and coordination with and among governmental agencies. (Sec. 166.01(F).)

Under the bill, governmental action also means any action by a governmental agency relating to the establishment, development, or operation of an eligible innovation project (sec. 166.01(F)).

### **Project facilities**

Under current law, project facilities means buildings, structures, and other improvements, equipment and other property, and any one, part of, or combination of the above, that comprise all or part of, or serve or are incidental to, an eligible project, including, but not limited to, public capital improvements. The term excludes small tools, supplies, and inventory. Under the bill, the items included above also are considered to be project facilities if they comprise all or part, or serve or are incidental to, an eligible innovation project. (Sec. 166.01(K).)

### **Differences between the Facilities Establishment Fund Law and the Innovation Ohio Loan Program**

Many of the procedures and criteria for eligibility established by the bill for the Innovation Ohio Loan Program are similar, or even identical, to those found in

the Facilities Establishment Fund Law. The following list describes additional differences between the programs.

**Declaration of legislative intent and purpose**

The declaration of legislative intent and purpose of the Facilities Establishment Fund Law expresses a finding that many local areas throughout Ohio are experiencing economic stagnation or decline, and that investments through the Facilities Establishment Fund constitute a deserved, necessary reinvestment by the state in those areas, materially contribute to their economic revitalization, and result in improving the economic welfare of all of the people of the state (sec. 166.02(A)). The intent and purpose clause established by the bill for the Innovation Ohio Loan Program focuses on high-value jobs based on research, technology, and innovation (see "**Legislative declaration of intent**").

**Utilization of innovation property in Ohio**

The authority of the Director under the Innovation Ohio Loan Program to take interests in property in order to ensure that innovation property is utilized in Ohio is a new authority that is not granted in the Facilities Establishment Law.

**Recommendation by a regional economic development entity**

The Facilities Establishment Fund Law provides that the Director is not required to submit any data, determinations, or application materials to the DFAC if the provision of assistance has been recommended by a regional economic development entity (sec. 166.05(C)(2)). A regional economic development entity is an organization that is under contract with the Director to administer a loan program authorized to utilize the proceeds of bond issuances for which service payments are made with state liquor profits (sec. 166.01(Q)). The Innovation Ohio Loan Program does not contain this exception from DFAC approval.

**Prevailing wage**

The Facilities Establishment Fund Law requires that laborers and mechanics employed on project facilities assisted under that Law receive prevailing wages as determined by the Prevailing Wage Law (R.C. Chapter 4115.). The Innovation Ohio Loan Program is not subject to this requirement. (Sec. 166.02(E).)

**General eligibility for assistance**

The two programs require the Director to make similar determinations with respect to the general criteria to determine the eligibility of a project for assistance. The requirements are not identical, however. The following five determinations

are required by the Facilities Establishment Fund Law but are *not* required under the Innovation Ohio Loan Program:

(1) The needs, and degree of needs, of the area in which the eligible project is to be located;

(2) The competitive effect of the assistance on other enterprises providing jobs for people of the state;

(3) The effect of the assistance on the loss of or damage to or destruction of prime farmland;

(4) The length of time the operator of the project has been operating facilities within the state;

(5) The reservation of financial assistance for small business made by the General Assembly.<sup>5</sup> (Sec. 166.05(A)(1)(d), (f), (i), (j), and (k).)

In making the required determinations for eligibility, the Ohio Innovation Loan Program permits the Director to consider the effect of an eligible innovation project upon any entity engaged to provide innovation property to be acquired, leased, or licensed in connection with such assistance (sec. 166.14(A)(3)). The Facilities Establishment Fund Law does not contain such a provision.

Under the Facilities Establishment Fund Law, other criteria that the Director must take into consideration are payrolls and taxes generated, at both state and local levels, by the eligible project and by the employment created or preserved by the eligible project (sec. 166.05(A)(1)(b)). The bill establishes the same criteria for the Innovation Ohio Loan Program, but adds that payrolls and taxes generated "in connection with the eligible innovation project" must also be considered by the Director (sec. 166.14(A)(1)(b)).

Also, the Facilities Establishment Fund Law requires the Director to take into consideration the impact of the eligible project and its operations on local government services, including school services, and on public facilities (sec. 166.05(H)). The Innovation Ohio Loan Program permits, but does not require, the Director to "accord value" to the benefits to the local area (sec. 166.05(A)(2)).

In addition, the Facilities Establishment Fund Law requires the Director to determine that the benefits to the state and the local area from the eligible project

---

<sup>5</sup> As noted above, the specific provision related to the reservation of financial assistance amounts for small business that is found in the Facilities Establishment Fund Law is removed by the bill.

exceed the cost of providing the assistance (sec. 166.05(B)). The Innovation Ohio Loan Program does not include this provision.

**Eligibility for a loan guarantee**

The Director must use similar criteria to make determinations regarding the eligibility of a recipient for a loan guarantee under the two programs. The criteria are not identical, however. Under the Facilities Establishment Fund Law, the Director is required to engage an independent engineer, architect, or appraiser to make a determination that the principal amount to be guaranteed does not exceed 90% of the allowable costs of the eligible project (sec. 166.06(B)(2), not in the bill). Under the Innovation Ohio Loan Fund, the Director is permitted, but not required, to contract with an independent engineer, appraiser, or other professional to make this determination (sec. 166.15(B)(2)).

Under the Facilities Establishment Fund Law, the Director is required to determine that the rate of interest on a loan to be guaranteed, and on any other loan made by the same parties or related persons for the eligible project, is not excessive (sec. 166.06(B)(4)). The bill does not establish this requirement for the Innovation Ohio Loan Program.

**Eligibility for a loan**

The two programs use similar criteria with respect to determining eligibility for loans. However, they are not identical. Under the Facilities Establishment Fund Law, the amount that may be loaned may not exceed 75% of the total allowable costs of the eligible project, unless the entire amount to be lent is derived from the issuance and sale of project financing obligations (obligations financed from loan repayments rather than liquor profits), in which case the amount may not exceed 90% of the total allowable costs of the eligible project (sec. 166.07(A)(3)). The bill establishes a limit of 90% of allowable innovation costs for all loans made from the Innovation Ohio Loan Fund (sec. 166.16(A)(3)).

Under the Facilities Establishment Fund Law, the Director must determine that the eligible project could not be achieved in the local area in which it is to be located if the portion of the project to be financed by the loan instead were to be financed by guaranteed loan (sec. 166.07(A)(4)). The bill does not establish this requirement for the Innovation Ohio Loan Program Fund.

Under the Facilities Establishment Fund Law, the amount of the loan to be repaid must be adequately secured by a mortgage, lien, assignment, or pledge at a level of priority that the Director requires (sec. 166.07(A)(5)). The bill establishes this requirement for the Innovation Ohio Loan Program, and adds that the Director may take into account the value of any rights granted by the borrower to the

Director to control the use of any property of the borrower under circumstances described in the loan documents (sec. 166.16(A)(4)).

Under the Facilities Establishment Fund Law, a borrower is required to hold at least a 10% equity interest in the eligible project at the time the loan is made (sec. 166.07(A)(6)). The bill does not establish this requirement for the Innovation Ohio Loan Program.

---

## COMMENT

Under Generally Accepted Accounting Principles (GAAP), an expense that is capitalized is recorded as an asset and the cost is amortized over future years. Generally, the costs of materials consumed and labor used in internal research and development (R&D) projects are not capitalized, although the costs of equipment may be capitalized if the equipment also is usable for other R&D projects. In addition, the filing costs of a patent application, and associated legal work, may be capitalized. Different rules apply for the capitalization of R&D that is acquired from an external source.

Section 13, Article VIII of the Ohio Constitution permits the state "[t]o acquire, construct, enlarge, improve, or equip, and to sell, lease, exchange or otherwise dispose of property, structures, equipment, and facilities within the State of Ohio for industry, commerce, distribution, or research, to make or guarantee loans and to borrow money and issue bonds or other obligations to provide moneys..." for these purposes. This provision prohibits the state from obligating or pledging monies raised by taxation for the payment of bonds or other obligations issued or guarantees made pursuant to this section of the Constitution. It is unclear whether expenditures for labor may be construed as "property" within the meaning of this section of the Constitution.

---

## HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	10-08-02	p. 2059

S0300-i.124/ejs