



**S.B. 236**

126th General Assembly  
(As Introduced)

**Sen. Carey**

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**BILL SUMMARY**

- Implements the provisions of Section 2p, Article VIII of the Ohio Constitution (effective November 8, 2005) regarding the issuance of obligations to support research and development projects and the development of certain sites and facilities.
- Authorizes the Third Frontier Commission to award support to individuals and certain entities for the purpose of supporting research and development projects.
- Creates the Job Ready Site Program under which the Department of Development is to provide grants to pay for the allowable costs of eligible projects that, upon completion, will be sites and facilities primarily intended for commercial, industrial, or manufacturing use.
- Makes an appropriation.

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**TABLE OF CONTENTS**

Overview.....	2
Research and development projects.....	2
Membership of the Third Frontier Commission; financial disclosure .....	2
Awarding of support for projects .....	3
Issuance of obligations to fund the support .....	7
Development of sites and facilities .....	8
Job Ready Site Program .....	8
Administration of the Program .....	9
Project requirements .....	12
Priority order.....	12
Grant agreements; prevailing wage .....	13
Annual report .....	14
Issuance of obligations to fund grants .....	14

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## CONTENT AND OPERATION

### Overview

Section 2p, Article VIII of the Ohio Constitution (effective November 8, 2005) authorizes the issuance of general obligation bonds and other obligations of the state to finance three types of economic development projects: (1) public infrastructure capital improvements, (2) research and development, and (3) development of sites and facilities in Ohio in support of industry, commerce, distribution, and research and development. The bill implements the provisions of Section 2p, Article VIII regarding the issuance of obligations to support research and development projects and the development of certain sites and facilities. It authorizes the Third Frontier Commission to award support to individuals and certain entities for the purpose of supporting research and development projects, and creates the Job Ready Site Program under which the Department of Development is to provide grants to pay for the allowable costs of eligible projects that, upon completion, will be sites and facilities primarily intended for commercial, industrial, or manufacturing use.

### Research and development projects

#### Membership of the Third Frontier Commission; financial disclosure

(R.C. 184.01; Section 3)

Current law creates the Third Frontier Commission in the Department of Development. The purpose of the Commission is to coordinate and administer science and technology programs that expand the state's high technology research and development capabilities and the state's product and process innovation and commercialization. The Commission consists of the Director of Development, the Chancellor of the Ohio Board of Regents, and the Governor's Science and Technology Advisor.

The bill adds six members to the Commission who are to be appointed by the Governor as follows:

(1) One member to represent the central region, which is composed of Delaware, Fairfield, Fayette, Franklin, Hocking, Knox, Licking, Logan, Madison, Marion, Morrow, Perry, Pickaway, Ross, and Union counties;

(2) One member to represent the west central region, which is composed of Champaign, Clark, Darke, Greene, Miami, Montgomery, Preble, and Shelby counties;

(3) One member to represent the northeast region, which is composed of Ashland, Ashtabula, Carroll, Crawford, Columbiana, Cuyahoga, Erie, Geauga, Holmes, Huron, Lake, Lorain, Mahoning, Medina, Portage, Richland, Stark, Summit, Trumbull, Tuscarawas, and Wayne counties;

(4) One member to represent the northwest region, which is composed of Allen, Auglaize, Defiance, Fulton, Hancock, Hardin, Henry, Lucas, Mercer, Ottawa, Paulding, Putnam, Sandusky, Seneca, Van Wert, Williams, Wood, and Wyandot counties;

(5) One member to represent the southeast region, which is composed of Adams, Athens, Belmont, Coshocton, Gallia, Guernsey, Harrison, Jackson, Jefferson, Lawrence, Meigs, Monroe, Morgan, Muskingum, Noble, Pike, Scioto, Vinton, and Washington counties; and

(6) One member to represent the southwest region, which is composed of Butler, Brown, Clermont, Clinton, Hamilton, Highland, and Warren counties.

In order to be eligible for appointment to the Commission, a person must have a background in business or research.

The Governor is required to make the initial appointments no later than April 1, 2006, on which date the terms of office of those members begin. Of the initial appointments, two are for one year, two are for two years, and two are for three years, as assigned by the Governor. Thereafter, appointments are for three-year terms. Members may be reappointed, and vacancies are to be filled in the same manner as appointments.

The bill also requires that Commission members file financial disclosure statements in accordance with existing ethics laws.

#### **Awarding of support for projects**

(R.C. 184.02, 184.03, 184.10(B), 184.11, 184.12, and 184.13)

The bill authorizes the Third Frontier Commission to award support to individuals, public and private entities, agencies, and institutions, private companies or organizations, research organizations, or combinations or consortiums of any of them for the purpose of supporting research and development projects. "**Research and development projects**" is defined as projects or activities in support of Ohio industry, commerce, and business, including:

(1) Research and product innovation, development, and commercialization through efforts by, and may include collaboration among, Ohio business and

industry, state and local public entities and agencies, public and private institutions, or research organizations; and

(2) Projects and activities supporting any and all matters related to research and development purposes including: (a) attracting researchers and research teams by endowing chairs or otherwise, (b) developing and commercializing products and processes, (c) promoting, developing, and securing intellectual property matters and rights such as copyrights and patents, (d) promoting, developing, and securing property interests, including time sharing arrangements, and (e) promoting, developing, and securing financial rights and matters such as royalties, licensing, and other financial gain or sharing resulting from research and development.

Individuals, Ohio businesses and industries, local public entities and agencies, public and private education institutions, including state-supported and state-assisted institutions of higher education, the state and state agencies, and research organizations and institutions are permitted to collaborate on research and development projects. However, the state is prohibited from having an ownership interest in or operational control of any business or private entity, agency, institution, or organization that has received support for a research and development project under the bill *and* cannot assume any shared risk or shared liability.

**Type of support** (R.C. 184.11). The support may be in any manner the Commission determines, such as: (1) by any one or a combination of grants, loans (including loans to lenders or the purchase of loans), subsidies, contributions, advances, or guarantees, (2) by payment or reimbursement from available money, or (3) by providing staffing or other support (including computer or other technology capacity) or equipment or facilities (including interests in real property).

**Eligibility** (R.C. 184.10(A) and 184.111). Generally, the Commission may award the support only to in-state entities. "**In-state entity**" includes individuals, public and private entities, agencies, and institutions, private companies or organizations, or research organizations that have substantial presence in Ohio.

If an entity awarded support is collaborating with any entity that is not an in-state entity on the research and development project for which the support was awarded, the in-state entity may provide any portion of that support to the other entity *only if* the Commission, in its discretion and only under exceptional circumstances that the Commission determines, permits it.

**Procedures; support agreements** (R.C. 184.112, 184.113, 184.114, 184.115, and 184.14). Under the bill, the Commission must establish a competitive process for making awards of support, which process is designed to

fund the research and development projects that have the most merit. Additionally, each individual, public and private entity, agency, and institution, private company or organization, research organization, or combination or consortium of any of them that the Commission selects to receive support is required to enter into an agreement governing the use of the support for the project. The agreement is to contain terms the Commission determines to be necessary, including a statement that any support given by the Commission may be used to pay costs of or in support of or related to research and development purposes, such as capital formation, direct operating costs, costs of research and facilities (including interests in real property), and support for public and private institutions of higher education, research organizations or institutions, and private sector entities.

If the Commission intends to award a *grant* for a research and development project to an individual or private entity, agency, institution, or organization, the agreement governing the use of the grant must include the requirements that the project primarily benefit Ohio and, if the recipient of the grant is not an in-state entity, that it will become an in-state entity not later than six months after entering into the agreement. A grant recipient that violates these requirements forfeits the grant and must repay the grant amount plus interest to the Commission.<sup>1</sup>

The Commission is also required to establish procedures that permit public inspection of all support awarded for research and development projects and the processes used to determine which projects will receive support.

**Monitoring of projects** (R.C. 184.15 and 184.16). The bill requires the Department of Development to monitor each research and development project receiving support to ensure the following:

(1) Fiscal accountability, so that the support is used in accordance with the agreement entered into;

(2) Operating progress, so that the project is managed to achieve the requirements of that agreement and so that problems may be promptly identified and remedied;

(3) Desired outcomes, including job creation and other anticipated economic impacts.

Additionally, the Commission must publish a report twice each year detailing all support awarded for research and development projects under the bill,

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<sup>1</sup> *The rate of interest is that required by R.C. 5703.47.*

including the amount or type of support and the progress and performance metrics for the projects.<sup>2</sup>

**Outreach activities** (R.C. 184.171, 184.172, and 184.173). The Commission is required to conduct outreach activities that seek to include minorities in the various projects and initiatives sponsored, funded, encouraged, or otherwise promoted by the Commission.<sup>3</sup> These activities are to be directed at faculty and students involved in science and engineering disciplines, professional scientists and engineers, technical assistance providers, the investment community, minority-owned businesses, and minority entrepreneurs.

The outreach activities must include the following:

(1) Identifying and partnering with historically black colleges and universities to solicit and implement a minority technology demonstration project funded by the National Science Foundation;

(2) Working with all institutions of higher education in Ohio to support minority faculty and students involved in science and engineering;

(3) Developing a plan to contact by telephone minority-owned businesses and entrepreneurs to notify them of, and encourage them to participate in, the various Third Frontier projects and initiatives;

(4) Identifying minority professional and technical trade associations and economic development assistance organizations and notifying them of the various Third Frontier projects and initiatives;

(5) Partnering with regional technology councils to foster local efforts to support minority-owned technology businesses or otherwise identify networks of minority-owned technology businesses, entrepreneurs, and individuals operating locally;

(6) Identifying minority technology firms and marketing them to the investment community, including the Ohio Venture Capital Authority created under current law (R.C. 150.02) and the managers of all investment funds receiving Third Frontier project support.

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<sup>2</sup> *A copy of each report is to be delivered to the Governor, Speaker and Minority Leader of the House of Representatives, and President and Minority Leader of the Senate.*

<sup>3</sup> *For purposes of this provision, "minority" means an individual who is a U.S. citizen and is a member of one of the following economically disadvantaged groups: Blacks or African Americans, American Indians, Hispanics or Latinos, and Asians (R.C. 184.17).*

Lastly, these outreach activities are to be conducted in conjunction with the EDGE Program created under current law (R.C. 123.152).

**Issuance of obligations to fund the support**

(R.C. 151.01, 151.02, 151.10, and 184.18; Section 4)

The bill requires the Ohio Public Facilities Commission (OPFC) to issue general obligations of the state to pay costs of research and development projects pursuant to Section 2p, Article VIII of the Ohio Constitution and the bill.<sup>4</sup> The obligations issued are to be in the amount determined by OPFC to be required for those purposes; provided, however, that the total principal amount of obligations issued cannot exceed \$500 million. The bill specifically authorizes OPFC, upon request of the Department of Development, to issue and sell original obligations of the state in an aggregate amount not to exceed \$200 million. The obligations are to be issued and sold from time to time and in amounts necessary to ensure sufficient moneys to pay costs of research and development projects.

For purposes of this provision of the bill, "**project**" means any research and development project, as defined above, or facility, including undivided or other interests, acquired or to be acquired, constructed or to be constructed, or operating or to be operated by a person doing business in Ohio or by an educational or scientific institution located in Ohio with all or part of the cost of the project being paid from a grant or loan from the Third Frontier Research and Development Fund (see below) or a loan guaranteed under the Third Frontier Commission Law (R.C. Chapter 184.), including all buildings and facilities determined necessary for the operation of the project, together with all property, rights, easements, and interests that may be required for the operation of the project.

**Third Frontier Research and Development Fund** (R.C. 151.10(C) and 184.18). Net proceeds of these obligations are to be deposited into the Third Frontier Research and Development Fund created by the bill in the state treasury. Moneys in the Fund are to be used to finance the support described above and for

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<sup>4</sup>*"Costs of research and development projects" includes related direct administrative expenses and allocable portions of the direct costs of those projects, costs of capital facilities, and working capital, all for: (a) attracting researchers and research teams by endowing research chairs or otherwise, (b) activities to develop and commercialize products and processes, (c) intellectual property matters such as copyrights and patents, (d) property interests including timesharing arrangements, capital formation, direct operating costs, and costs of research and facilities including interests in real property, and (e) support for public and private institutions of higher education, research organizations or institutions, and private sector entities. (R.C. 151.10(A)(1).)*

associated administrative expenses. All investment earnings of the Fund are to be credited to the Fund.

**Third Frontier Research and Development Projects Bond Service Fund**

(R.C. 151.10(D)). The bill also creates in the state treasury the Third Frontier Research and Development Projects Bond Service Fund. All moneys received by the state and required by the bond proceedings to be deposited, transferred, or credited to this bond service fund, and all other moneys transferred or allocated to or received for the purposes of the fund, must be deposited and credited to the fund, subject to any applicable provisions of the bond proceedings, but without necessity for any act of appropriation. During the period beginning with the date of the first issuance of obligations and continuing during the time that any obligations are outstanding in accordance with their terms, so long as moneys in the bond service fund are insufficient to pay debt service when due on those obligations payable from the fund (except the principal amounts of bond anticipation notes payable from the proceeds of renewal notes or bonds anticipated) and due in the particular fiscal year, a sufficient amount of revenues of the state is committed and, without necessity for further act of appropriation, is to be paid to the bond service fund for the purpose of paying that debt service when due.

**Development of sites and facilities**

**Job Ready Site Program**

(R.C. 122.085 and 122.086)

The bill creates the Job Ready Site Program to provide grants to pay for allowable costs of eligible applicants for eligible projects. "**Eligible project**" includes projects that, upon completion, will be sites and facilities primarily intended for commercial, industrial, or manufacturing use. It does not, however, include sites and facilities intended primarily for residential, retail, or government use. An "**eligible applicant**" includes any political subdivision or non-profit economic development organization, and, with prior approval of the Director of Development, private, for-profit entities.

In addition, "**allowable costs**" includes costs related to the following:

- (1) Acquisition of land and buildings;
- (2) Building construction;
- (3) Making improvements to land and buildings, including (a) expanding, remodeling, renovating, and modernizing buildings and structures, including leasehold improvements, and (b) site preparation, including wetland mitigation.

(4) Remediation, in compliance with state and federal environmental protection laws, of environmentally contaminated property on which hazardous substances exist under conditions that have caused or would likely cause the property to be identified as contaminated by the Ohio Environmental Protection Agency or the United States Environmental Protection Agency;

(5) Infrastructure improvements, including (a) demolition of buildings and other structures, (b) installation or relocation of water, storm water and sanitary sewer lines, water and waste water treatment facilities, pump stations, and water storage mechanisms and other similar equipment or facilities, (c) construction of roads, bridges, traffic control devices, and parking lots and facilities, (d) construction of utility infrastructure such as natural gas, electric, and telecommunications, including broadband and hookups, (e) water and railway access improvements, (f) costs of professional services.<sup>5</sup> "Allowable costs" does not, however, include administrative costs assessed by or fees paid to the recipient of a grant.

### **Administration of the Program**

(R.C. 122.086)

The Program is to be administered by the Department of Development pursuant to guidelines established for it by the Director of Development. All grants must be awarded through the annual competitive process or the discretionary process.

**Annual competitive process** (R.C. 122.087 to 122.0811 and 122.0819). The bill requires the Director to establish an annual competitive process for making grants under the Job Ready Site Program. At least two-thirds of the amounts that may be distributed as grants each year must be distributed under this process.

In order to be considered for a grant under this process, an eligible applicant must fill out an application provided by the Department and file it with the district public works integrating committee with jurisdiction over the area in which the eligible project is located.<sup>6</sup> All of the following must be provided on the application:

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<sup>5</sup> "**Professional services**" includes legal, environmental, archeological, engineering, or other similar services performed in conjunction with an eligible project (R.C. 122.085(E)).

<sup>6</sup> The district public works integrating committees are those committees established under current law in the districts in which the state is divided for purposes of allocating

- (1) Contact information for the applicant;
- (2) A legal description of the property for which the grant is requested;
- (3) A summary of the proposed project that includes (a) a general description of the project, including individuals, organizations, or other entities that will play a critical role in the implementation of the project, (b) an explanation of the need for the project and the predicted economic impact, (c) an explanation of the need for a grant from the Program, and (d) the commitments required under the bill (see "**Project requirements; Under the annual competitive process,**" below).
- (4) A detailed summary of costs for the project, including supporting documents for cost estimates;
- (5) Sources of funding for the project, including documentation verifying the status of those funds;
- (6) Summary results of any preliminary engineering studies and environmental reviews that have been conducted;
- (7) A comprehensive marketing plan detailing how the project will be marketed upon completion, if appropriate;
- (8) Copies of resolutions or ordinances related to the project, including those resolutions or ordinances adopted by the political subdivision with jurisdiction over the geographic area in which the project is located;
- (9) Any other information the Director requests.

Each grant application received by a district public works integrating committee is to be evaluated by the executive committee of the district committee to determine whether the application is complete and whether the project meets the requirements of the bill (see below). If they so find, the executive committee is required to prioritize the project pursuant to the bill (see below) and pursuant to local priorities, as those priorities are determined by the executive committee, with all other projects with complete applications that meet the requirements of the bill. If the application is incomplete or the project does not meet the requirements of the bill, the executive committee is to notify the applicant of the deficiencies and the period of time within which the applicant must submit corrections to the executive committee. Failure to correct deficiencies within the time designated

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*funds to finance public infrastructure capital improvement projects of local subdivisions (R.C. 122.085(B)). (See R.C. 164.03 and 164.04.)*



disqualifies the project from consideration for a grant during the annual competitive process for that year.

The executive committee, by the affirmative vote of a majority of all its members, must select three eligible projects from the projects it has prioritized each year pursuant to the annual competitive process. It is to forward the applications and any accompanying information for each of the selected projects to the Department in the time and manner required by the guidelines governing the Program.

For a district public works integrating committee that does not have an executive committee, the full committee is to perform the functions assigned to the executive committee under the bill. An executive committee, or a district committee that does not have an executive committee, may appoint a working group of committee members and staff to perform the functions of those committees. The guidelines established to govern the Program may provide for recovery of some or all of the costs incurred by district public works integrating committees and executive committees in conducting their duties under the Program.

The Department is required to evaluate each eligible project selected to determine whether the application for the proposed project is complete and whether it meets the requirements of the bill (see below). If the Department so finds, it must notify the eligible applicant that the application is complete and prioritize the project pursuant to the bill (see below) with all other eligible projects with complete applications that meet the requirements. If the application is incomplete or the project does not meet the requirements of the bill, the Department must notify the applicant of the deficiencies and the period of time within which the applicant must submit corrections to the Department. Failure to correct deficiencies within the time designated disqualifies the project from consideration for a grant during the annual competitive process for that year.

The Director, on completion of the evaluations and prioritization, is required to make a recommendation to the Controlling Board asking for approval to make grants for the eligible projects selected by the Director. The Director must take into consideration the geographic diversity of awards when making the selection of eligible projects to receive grants.

**Discretionary process** (R.C. 122.0812 and 122.0813). The Director must also establish a discretionary process that permits the Director to make grants in situations that include those in which the timing of a proposed eligible project is such that the annual competitive process is not suitable. All the procedures and requirements governing application for the discretionary grants are to be established by the Director as part of the Program guidelines.

The Director must evaluate each application for a discretionary grant to determine whether the application is complete and whether the eligible project meets the requirements of the bill (see below). If the application is complete and the project meets those requirements, the Director may make a recommendation to the Controlling Board asking for approval to make the discretionary grant for the project. If the application is incomplete or the project does not meet these requirements, the Department must notify the applicant of the deficiencies and work with the applicant to correct the deficiencies. If the deficiencies are corrected, the Director may make a recommendation to the Controlling Board asking for approval to make the discretionary grant for the project.

### **Project requirements**

**Under the annual competitive process** (R.C. 122.0815(A)). A project must meet the following requirements in order to be considered for a grant under the annual competitive process:

- (1) The application for the grant is made by an eligible applicant.
- (2) The project for which the application is made is an eligible project.
- (3) The applicant commits to all of the following: (a) to use the grant to pay only allowable costs for the project, (b) not to use the grant to fund more than 75% of the total cost of the project, and (c) not to use more than 10% of the grant amount to pay the costs of professional services under the project.
- (4) The grant amount requested does not exceed \$5 million.
- (5) The applicant and project comply with any other criteria the Director determines is necessary.

**Under the discretionary process** (R.C. 122.0815(B)). A project must meet the requirements described in (1) to (3), above, in order to be considered for a grant under the discretionary process.

### **Priority order**

(R.C. 122.0816)

The Department and the executive committees of district public works integrating committees are required to apply the following factors to eligible projects under the annual competitive process to determine a priority order for the projects:

- (1) The potential economic impact of the project;

- (2) The amount of local, federal, and private funding available for the project;
- (3) The demonstrated need for the project;
- (4) The strength of the project's marketing plan, if appropriate;
- (5) The level of financial need; and
- (6) Any other factor the Director determines should be considered.

**Grant agreements; prevailing wage**

(R.C. 122.0814 and 122.0818)

If the Controlling Board approves a grant for an eligible project pursuant to the annual competitive process or the discretionary process, the Director is required to enter into a grant agreement with the applicant. The agreement must be executed prior to the payment or disbursement of any funds under the grant and must contain the following provisions:

- (1) A designation of a single officer or employee of the applicant who will serve as the project manager;
- (2) A detailed description of the scope of the work required under the project, including anticipated sources and uses of funds;
- (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%;
- (4) Provisions for the recovery by the Department of grant funds for failure to meet the terms of the agreement;
- (5) A requirement that annual reports be made by the applicant on the progress of the project and any other information about the status of the project as required by the guidelines established for the Program; and
- (6) Any other provisions the Director determines necessary.

The bill states that eligible projects receiving a grant are "public improvements" subject to the prevailing wage requirements of R.C. Chapter 4115. (Wages and Hours on Public Works).

**Annual report**

(R.C. 122.0817)

The Director, in accordance with the guidelines established to govern the Program, is required to publish an annual report that includes details on each grant awarded pursuant to the Program and the status of projects funded in previous years.

**Issuance of obligations to fund grants**

(R.C. 151.01, 151.02, and 151.11; Section 7)

The bill requires the OPFC to issue general obligations of the state to pay costs of sites and facilities pursuant to Section 2p, Article VIII of the Ohio Constitution and the bill.<sup>7</sup> The obligations issued are to be in the amount determined by OPFC to be required for those purposes; provided, however, that the total principal amount of obligations issued cannot exceed \$150 million. The bill specifically authorizes OPFC, upon request of the Department, to issue and sell original obligations of the state in an aggregate amount not to exceed \$30 million. The obligations are to be issued and sold from time to time and in amounts necessary to ensure sufficient moneys to pay the costs of sites and facilities.

**Job Ready Site Development Fund** (R.C. 151.11(C) and 122.0820). Net proceeds of these obligations are to be deposited into the Job Ready Site Development Fund created by the bill in the state treasury. Moneys in the Fund are to be used to make grants for eligible projects under the Program and associated administrative expenses.

**Job Ready Site Development Bond Service Fund** (R.C. 151.11(D)). The bill also creates in state treasury the Job Ready Site Development Bond Service Fund. All moneys received by the state and required by the bond proceedings to be deposited, transferred, or credited to this bond service fund, and all other moneys transferred or allocated to or received for the purposes of the fund, must be deposited and credited to the fund, subject to any applicable provisions of the bond proceedings, but without necessity for any act of appropriation. During the period beginning with the date of the first issuance of obligations and continuing during the time that any obligations are outstanding in accordance with their terms, so long as moneys in the bond service fund are insufficient to pay debt service when due on those obligations payable from the fund (except the principal amounts of bond anticipation notes payable from the proceeds of renewal notes or bonds

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<sup>7</sup> *"Costs of sites and facilities" includes related direct administrative expenses and allocable portions of the direct costs of those projects (R.C. 151.11(A)(1)).*

anticipated) and due in the particular fiscal year, a sufficient amount of revenues of the state is committed and, without necessity for further act of appropriation, is to be paid to the bond service fund for the purpose of paying that debt service when due.

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## **HISTORY**

ACTION	DATE
Introduced	12-02-05

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