Ohio Legislative Service Commission

Final Analysis

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(As Passed by the General Assembly)

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Effective date: September 28, 2012

ACT SUMMARY

Organization and operation of the Department of Development

- Renames the Department of Development the "Development Services Agency."
- Establishes the Office of TourismOhio within the Agency, creates the TourismOhio Advisory Board, and establishes a pilot program to test a new funding mechanism for the state's travel and tourism marketing.
- Authorizes the Agency to enter into cooperative or contractual agreements with any individual, organization, or business to create, administer, or otherwise be involved with Ohio tourism-related promotional programs.
- Requires the Director of Development Services to make certain information available to the public with respect to each project for which financial assistance is awarded by the Agency.
- Renames the Division of Economic Development the "Business Services Division."

- Replaces the Tax Incentive Programs Operating Fund with the Business Assistance Fund and modifies the operation of the Fund.

- Creates the Business Development and Assistance Fund in the state treasury used for Agency operating purposes or programs providing business support or business assistance, including grants, loans, or administrative expenses.

- Eliminates the Development Financing Advisory Council, and eliminates or transfers to the Agency the duties of the Council.

- Requires the Director of Development Services to administer all funds received under the federal Small Business Liability Relief and Brownfields Revitalization Act.

JobsOhio

- Modifies the operation of JobsOhio relative to contracts with the Development Services Agency, the use of public money, public records, and ethical conduct.

Economic development assistance programs

- Permits employers to claim the job creation tax credit on the basis of the increase in payroll tax withholding over an earlier payroll period that ends when a recommendation to approve the credit is made instead of when the credit is approved.

- Modifies the Small Business Investment Certificate Program administered by the Director of Development Services.

- Makes programmatic changes to the Capital Access Loan Program and authorizes transfers from the Minority Business Enterprise Loan Fund to the Capital Access Loan Program Fund for use in securing Capital Access Loans to minority businesses.

- Increases the maximum amount the Director, with Controlling Board approval, may loan to minority business enterprises unable to finance a proposed economic development project through ordinary financial channels at comparable terms.

- Increases the limit on the issuance of Ohio Enterprise Bonds (i.e., bonds that are not repaid by liquor profits) from $300 million total outstanding principal to whatever principal amount requires annual debt service of no more than $50 million.

Third Frontier Commission

- Increases the membership of the Third Frontier Commission.

Other provisions

- Eliminates the Director of Development's role in administering the Voluntary Action Program overseen by the Environmental Protection Agency (EPA) and transfers the Director's responsibilities to the EPA Director.

- Eliminates the Water and Sewer Commission and the Water and Sewer Fund.

- Clarifies the application of the "revolving door" ethics law to nonelected public officials and employees.

- Extends eligibility for the historic rehabilitation tax credit to qualified lessees of historic buildings who are eligible for the federal rehabilitation tax credit.

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CONTENT AND OPERATION

Organization and operation of the Department of Development

Renaming the Department

The act changes the name of the Department of Development to the "Development Services Agency," which is to be headed by the Director of Development Services.[1] The act does not make the change universally throughout the Revised Code, but only through a universally applicable definition in certain sections.

The act states that, in making this change, the General Assembly does not intend to make any substantive changes in statutory law. Additionally, the change is not to cause unnecessary expense. The letterhead, forms, printed materials, and signage displaying the former name of the Department may be used until they are replaced.[2]

Office of TourismOhio

The act creates within the Development Services Agency the Office of TourismOhio.[3] The purpose of the Office is to:

--Promote the state as a travel destination and provide related services or otherwise carry out the promotional functions or duties of the Agency, as necessary; and

--Perform an annual return-on-investment study analyzing the Office's success in promoting Ohio tourism. A report containing the findings of the study must be submitted to the Governor, the Speaker and minority leader of the House of Representatives, and the President and minority leader of the Senate. The report also must be made available to the public.

The Office is to be supervised by a director who is of equivalent rank of deputy director of the Agency and who serves at the pleasure of the Director of Development Services. The Office replaces the Division of Travel and Tourism within the Department of Development.[4]

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[1] See, primarily, R.C. 121.02, 121.03, 122.01, 166.01, 174.01, 184.011, 1551.01, 3735.01, and 5701.15.

[2] Sections 3 and 4.

[3] R.C. 122.07.

[4] R.C. 122.07 and 122.073; R.C. 122.011(A)(1) (conforming change).

Advisory Board

The act also establishes the TourismOhio Advisory Board to advise the Director of Development Services and the Director of the Office of TourismOhio on strategies for promoting tourism in the state.[5] The Board consists of the Chief Investment Officer of JobsOhio, the Director of the Office of TourismOhio, and nine members appointed by the Governor, as follows: one individual who is a representative of convention and visitors' bureaus; one individual who is a representative of the lodging industry; one individual who is a representative of the restaurant industry; one individual who is a representative of attractions; one individual who is a representative of special events and festivals; one individual who is a representative of agritourism; and three individuals who are representatives of the tourism industry. To qualify as a "representative of the tourism industry," an individual must possess at least five years of executive-level experience in the attractions, lodging, restaurant, transportation, or retail industry *or* with a destination marketing organization. Each appointee must be a United States citizen.

The Governor is required to make the original appointments within 60 days after the effective date of this portion of the act. Those members serve staggered terms; thereafter, terms of office are for three years. Each member of the Board holds office from the date of the member's appointment until the end of the term for which the member is appointed. Vacancies are filled in the manner prescribed for regular appointments. A member appointed to fill a vacancy occurring prior to the expiration of the term for which the member's predecessor was appointed holds office for the remainder of that predecessor's term. A member must continue in office subsequent to the expiration date of the member's term until the member's successor takes office or until 60 days have elapsed, whichever occurs first. Any member appointed to the Board is eligible for reappointment.

The Governor must designate one member of the Board as chairperson. All members of the Board except the Director of the Office of TourismOhio are eligible to vote.

Members appointed to the Board may be reimbursed for actual and necessary expenses incurred in connection with their official duties.

Tourism Fund

The act renames the Travel and Tourism Cooperative Projects Fund the "Tourism Fund," and provides that money in the Fund is to be used to defray costs incurred by

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[5] R.C. 122.071.

the Office of TourismOhio in promoting the state as a travel destination. The Fund consists of money credited or transferred to it and grants, gifts, and contributions made directly to it.[6]

Pilot program for funding travel and tourism marketing

The act creates a five-year pilot program to test a new funding mechanism for the state's travel and tourism marketing.[7] The funding mechanism, which begins operating in fiscal year 2014, is calculated as follows:

(1) Not later than October 20 of each year, starting in 2013 and ending in 2017, the Tax Commissioner must do both of the following:

(a) Calculate the growth in fiscal year sales tax revenue from tourism-related vendors classified under the industry codes identified in the act,[8] and certify that amount to the Director of Budget and Management.

(b) Calculate and certify to the Director the difference, if greater than zero, between the revenue collected by the sales tax during the 12-month period ending on the last day of the preceding June and the revenue collected during the same 12-month period one year earlier, for the tourism-related vendors identified in the act. On or before the last day of October of each year, starting in 2013 and ending 2017, the Director must transfer from the GRF to the Tourism Fund the amount certified by the Commissioner, but not exceeding $10 million for any fiscal year.

(2) Each fiscal year, beginning in fiscal year 2015, the Tax Commissioner must adjust the $10 million annual dollar limit on transfers to the Tourism Fund. The adjustment is to be made by adding to the annual limit the product of multiplying the limit for the preceding fiscal year by the sum of one plus the percentage increase in the Consumer Price Index (all urban consumers, Midwest region) for the 12-month period corresponding to the preceding fiscal year, with the result rounded to the nearest $1,000. The calculation of the percentage increase in the Consumer Price Index is to be done by taking the average index value over the 12 months of the last completed fiscal year and comparing that to the average index value over the 12 months of the immediately preceding fiscal year.

The pilot program is scheduled to terminate when the last transfer of funds made under (1)(b), above, occurs in fiscal year 2018 (specifically, in October of 2017). At that

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[6] R.C. 122.072.

[7] Section 5.

[8] Section 5(A)(2).

time, the Director of Development Services, the Director of Budget and Management, and the Tax Commissioner must jointly review the pilot program and make recommendations to the Governor and the General Assembly on whether to make the funding mechanism permanent. If they recommend to do so, they also are to recommend whether any changes should be made to it and whether the Office of TourismOhio and its functions should be removed from the Development Services Agency and established as a private nonprofit corporation or a subsidiary corporation of JobsOhio.

Contractual agreements for tourism promotion

The act permits the Development Services Agency to enter into cooperative or contractual agreements, through the Director of Development Services, with any individual, organization, or business to create, administer, or otherwise be involved with Ohio tourism-related promotional programs. Compensation under the agreements is determined by the Director and may include deferred compensation. Amounts due under an agreement is payable from the Tourism Fund. "Excess" revenue generated under an agreement must be remitted to the Fund to be reinvested in ongoing tourism marketing initiatives.[9]

Disclosure of project information

Under the act, the Director of Development Services is required to disclose certain information with respect to each project for which a loan, grant, tax credit, or other state-funded financial assistance is awarded by the Development Services Agency.[10] The information must be made available to the public within 30 days after the Agency enters into a contract with the recipient. The specific information that must be disclosed is as follows:

--A summary of the project that includes (1) a breakdown of the sources of the funds for each aspect of the project, such as state or federal programs, the operating company or entity itself, or any private financing, and a complete description of how each type of funds is to be used, (2) the total amount of assistance awarded, (3) a brief description of the project, (4) the operating company or entity that is awarded the assistance and the products or services provided by that company or entity, (5) the number of new jobs, at-risk jobs, and retained jobs anticipated, the hourly wages and hourly benefits of those jobs, and the dollar amount of assistance per job affected, (6) the strengths and weaknesses of the project, (7) the location of the project, the location of the operating company or entity, and whether relocation is involved, (8) the Ohio

[9] R.C. 122.073(A)(3).

[10] R.C. 122.942.

House district and Ohio Senate district in which the project is located, (9) the payment terms and conditions of the assistance awarded, (10) the collateral or security required, and (11) the recommendation of the staff assigned to the project.[11]

--A comprehensive report that provides a description of the operating company or entity; all relevant information regarding the project; an analysis of the operating company or entity and the goods or services it provides; the explicit terms of any collateral or security required; and the reasoning behind the staffs' recommendation.[12]

--Any other relevant information the Controlling Board may request, or the Director may consider necessary to more fully describe the details of the assistance or the operating company or entity, that is provided before the Controlling Board approves the assistance.[13]

The act states that nothing in this provision is to be construed as requiring the disclosure of information that is not a public record under the Public Records Law.[14]

Division of Economic Development

The Division of Economic Development within the former Department of Development is renamed the Business Services Division within the Development Services Agency.[15]

Business Assistance Fund

The act eliminates the Tax Incentive Programs Operating Fund and replaces it with the Business Assistance Fund and makes other modifications to the Fund.[16] First, the act provides that the Business Assistance Fund consists of money appropriated to it in addition to administrative fees collected by the Director of Development Services for participation in the Job Creation Tax Credit and Job Retention Tax Credit Programs and administrative fees related to agreements between the state and certain local governments under the Enterprise Zone Program and Community Reinvestment Area Program. Second, the act changes the permitted uses of the Fund. Under the act, the Business Assistance Fund must be used to pay expenses related to the administration of

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[11] R.C. 122.942(A).

[12] R.C. 122.942(B).

[13] R.C. 122.942(C).

[14] R.C. 122.942.

[15] R.C. 122.64.

[16] R.C. 122.174 (primary) and R.C. 122.17(I), 122.171(K), 122.175(K), 3735.672(C), and 5709.68(C).

the Business Services Division of the Development Services Agency. Former law required the Tax Incentive Programs Operating Fund to be used to pay expenses related to the administration of the Job Creation Tax Credit, Job Retention Tax Credit, Community Reinvestment Area, and Enterprise Zone Programs.

Business Development and Assistance Fund

The act creates the Business Development and Assistance Fund in the state treasury. Under the act, the Development Services Agency must deposit any money it receives for business development services and business assistance services to the credit of the Fund, including the following:

- Reimbursements for services provided for business development and business assistance services;
- Contract or grant payments from private entities;
- Donations or sponsorship payments from private entities;
- Contract or grant payments from public agencies or political subdivisions.

The Agency must use money in the Fund for any Agency operating purposes or programs providing business support or business assistance, including grants, loans, or administrative expenses. Investment earnings on moneys in the Fund are credited to the Fund.[17]

Development Financing Advisory Council

The act eliminates the Development Financing Advisory Council (DFAC). Under the act, DFAC's duties are vested either solely with the Director of Development Services or eliminated entirely. Under former law, DFAC assisted the Director of Development in administering certain economic development programs offered by the state. DFAC performed duties such as reviewing and making recommendations about applications for financial assistance programs.[18]

Use of federal Brownfields funds

The act requires the Director of Development Services to administer all federal funds received under the federal Small Business Liability Relief and Brownfields

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[17] R.C. 122.97.

[18] R.C. 122.40 (repealed) and 9.981, 121.22, 122.39, 122.41, 122.42, 122.43, 122.44, 122.48, 122.49, 122.50, 122.51, 122.52, 122.53, 122.561, 122.57, 122.61, 122.62, 122.64, 166.04, 166.05, 166.13, 166.14, 166.18, 166.19, 166.25, and 166.30; Sections 3 and 23.

Revitalization Act.[19] The act requires that the Director comply with all requirements imposed by the federal act related to the administration of, and application for, the funds as grants and loans. The act further requires the Director to establish a schedule of fees and charges to be paid to the Director by grant and loan recipients.[20]

JobsOhio

Contracts with the Development Services Agency

The act modifies the contractual relationship between JobsOhio and the Development Services Agency, as follows:

--Continuing law authorizes the Director of Development Services to execute contracts with JobsOhio providing for JobsOhio to assist the Director or the Development Services Agency in carrying out their respective duties under R.C. Chapter 122. or under a contract with the Director. The act additionally permits the execution of contracts with JobsOhio for the purpose of providing assistance in carrying out the duties of the Director or the Agency "under any other provision of the Revised Code dealing with economic development."[21]

--The act clarifies that, though JobsOhio performs some of its duties via contract with the Director, it is not to be considered a state or public entity for purposes of the statutes identified in ongoing law.[22]

--The act requires that the provision of services by JobsOhio to the Director or Agency be pursuant to a contract. The initial contract the Director enters into with JobsOhio is not to extend beyond June 30, 2013. After that date, the Director and JobsOhio may renew the contract for subsequent fiscal biennia, but a particular contract cannot be effective for longer than a fiscal biennium of the General Assembly. If at any time the Director determines that the contract with JobsOhio may not be renewed for the subsequent fiscal biennium, the Director must notify JobsOhio not later than 120 days prior to the end of the current fiscal biennium. If written notice is not provided to JobsOhio prior to 100 days before the end of the current fiscal biennium, the contract must be renewed upon terms agreed to by the parties.[23]

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[19] 42 United States Code 9601 and 9604.

[20] R.C. 122.6510.

[21] R.C. 122.011(E).

[22] R.C. 187.03.

[23] R.C. 187.04.

--Former law required all contracts between the Director of Development and JobsOhio to be approved by the Controlling Board. Under the act, only contracts that obligate the Development Services Agency to pay JobsOhio for services rendered are subject to Controlling Board approval.[24]

Use of public money

Former law governing the operation of JobsOhio provided that the approval or disapproval of all awards remained the function of the Department of Development and that all contracts for grants, loans, and tax incentives had to be between the Department and the recipient. The act narrows the involvement of the Development Services Agency to approval or disapproval of awards, grants, loans, and tax incentives involving *public money*.[25]

Public records

The JobsOhio law formerly provided that records created or received by JobsOhio that were *not* designated to be available to the public by the contract between JobsOhio and the Director of Development were not to be considered public records, regardless of who may have custody of them.[26]

Under the act, records created by JobsOhio continue not to be public records, as in prior law. However, whether records received by JobsOhio from another person or entity are public records depends on whether the records, when in the custody of that other person or entity, are public records. If the records would be public records in that person's or entity's custody (i.e., the person or entity is a public office and the records are public under the public records law), the records remain public records in JobsOhio's or any other person's custody. Otherwise, records received by JobsOhio are not public, regardless of who has custody of the records, unless they are designated to be available to the public by contract between JobsOhio and the Director of Development Services. The act also amends the Public Records Law to specifically exempt records created or received by JobsOhio that are not considered public records from the definition of "public record."[27]

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[24] R.C. 187.04.

[25] R.C. 187.04.

[26] R.C. 187.04(C).

[27] R.C. 149.43.

Ethics training; ethical conduct statements; gift policy

The act requires that each officer and employee of JobsOhio (1) sign an ethical conduct statement prescribed by the Board of Directors of JobsOhio, (2) complete an annual course or program of study on ethics, which course or program is reviewed and approved by the Board of Directors, and (3) comply with the gift policy prescribed by the Board of Directors.

Prior to the biennial renewal of the contract between the Director of Development Services and JobsOhio, the Board of Directors must submit to the Controlling Board a comprehensive review of the ethics policies and procedures that have been adopted by JobsOhio.[28]

Economic development assistance programs

Ohio Tax Credit Authority: job creation tax credits

Under the continuing job creation tax credit program, the Tax Credit Authority (TCA) may award a tax credit to an employer proposing a project to create new jobs in Ohio if the Authority finds that the project meets certain criteria. The amount of the credit is calculated as a percentage of the increase in employees' Ohio income tax withholdings from a 12-month base period. Under prior law, the base period was the 12-month period ending when the TCA approved the credit.

The act permits employers to use an earlier payroll period as the base from which the increase in payroll withholding is measured. Instead of the 12-month period ending when the TCA approves the credit, an employer can obtain an earlier base period by submitting the tax credit application and asking the Director of Development Services and JobsOhio to make a recommendation to the TCA. If the Director and JobsOhio make a recommendation, the base period is the 12-month period ending when that recommendation is made. An earlier base period presumably could result in a lower withholding base and, therefore, a greater credit. The earlier base period option does not apply to any employer project that is completed before the act's effective date.[29]

To obtain the earlier base period, an employer may, upon submitting its application to the Authority, request that the Chief Investment Officer (CIO) of JobsOhio and the Director of Development Services review the application and recommend to the Authority that the application be considered. As soon as possible after receiving such a request, the CIO and the Director must review the taxpayer's

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[28] R.C. 187.061.

[29] Section 7.

application and, if they determine that the application warrants consideration by the Authority, make that recommendation to the Authority not later than six months after the application is received by the Authority.[30]

The act requires the Authority to consider any taxpayer's application for which it receives such a recommendation. If the Authority determines that the taxpayer does not meet all of the criteria required for the award of a job creation tax credit, the Authority and the Development Services Agency are to proceed in accordance with rules adopted by the Director in accordance with R.C. Chapter 119.[31] The rules must establish a procedure to be followed by the Authority and the Agency in the event the Authority considers a taxpayer's application for which it receives a recommendation from the CIO and the Director but does not approve it.[32]

Small Business Investment Tax Credit

The act makes several modifications to the Small Business Investment Certificate Program administered by the Director of Development Services. The changes are outlined in the table below:

Topic	Former law	S.B. 314
Small business enterprise eligibility requirements[33]	(A) At the time of a qualifying investment, the enterprise's assets do not exceed $50 million, or its annual sales do not exceed $10 million. (B) The enterprise employs at least 50 full-time equivalent employees in this state for whom the enterprise is required to withhold state income tax, or more than one-half the enterprise's total number of full-time equivalent employees employed anywhere in the United States are employed in this state and are subject to that withholding requirement.	(A) Same as former law, but provides that when making the asset determination, the assets and annual sales of all of the enterprise's related or affiliated entities must be included in the calculation. (B) Same as former law.

[30] R.C. 122.17(C)(2)(a); Section 7.

[31] R.C. 122.17(C)(2)(b).

[32] R.C. 122.17(I).

[33] R.C. 122.86(A)(1).

Topic	Former law	S.B. 314
	(C) The enterprise, within six months after an eligible investor's qualifying investment is made, invests in or incurs certain specified costs, such as purchases of tangible personal property to be used by the business or compensation for new or retained employees, the cost of which is at least equal to the amount of the qualifying investment. (D) No provision.	(C) Same as former law. (D) At the time of the qualifying investment, the enterprise meets all of the following: • The enterprise has no outstanding tax or other liabilities owed to the state; • The enterprise is in good standing with the Secretary of State, if the enterprise is required to be registered with the Secretary; • The enterprise is current with any court-ordered payments; • The enterprise is not engaged in any illegal activity.
Ineligible investments[34]	A qualifying investment does not include any investment of money an eligible investor derives from a grant or loan from the federal government, the state, or a political subdivision.	Same as former law, but also disqualifies any investment of money which is the basis of a tax credit granted under any other provision of state law.
Eligible investor[35]	An eligible investor is defined as an individual, estate, or trust subject to the state income tax, or a pass-through entity in which such an individual, estate, or trust holds a direct or indirect ownership or other equity interest.	Same as former law, but also requires that the individual, estate, trust, or pass-through entity must not owe any outstanding tax or other liability to the state at the time of a qualifying investment.

[34] R.C. 122.86(A)(2).

[35] R.C. 122.86(A)(3).

Topic	Former law	S.B. 314
Application fee	No provision.	Requires the applicant to pay an application fee equal to the greater of 1/10 of 1% of the amount of the intended investment or $100.[36]
Timing of issuance of small business investment certificates[37]	(A) Required the Director to issue certificates in the order in which the Director receives applications for the certificates. (B) No provision.	(A) Provides that the Director may *reserve* certificates in the order in which the Director receives applications for the certificates, but may *issue* the certificates as applications are completed. (B) Provides that an application is completed when the Director has validated that an eligible investor has made a qualified investment and the small business enterprise has made the appropriate reinvestment of the qualified investment pursuant to the requirements of the Program.
Requirements to issue certificates	No provision.	Provides that the Director may issue a small business investment certificate only if both of the following apply at the time of issuance: • The small business enterprise meets all of the requirements of the Program (*see* (D) under "**Small business enterprise eligibility requirements**" *above*); • The eligible investor does not owe any outstanding tax or other liability to the state.[38]

[36] R.C. 122.86(B).

[37] R.C. 122.86(B).

[38] R.C. 122.86(C)(4).

Topic	Former law	S.B. 314
Required submissions to the Department[39]	Upon the request of the Director, each enterprise in which a qualifying investment was made under the Program was required to provide records or other evidence that the enterprise was a small business enterprise that met the Program's qualifications.	Same as former law, but also requires each enterprise to provide annually to the Director records or evidence regarding the number of jobs created or retained in the state.
Department record keeping requirements[40]	No provision.	Requires the Director to compile and maintain a record of the number of jobs created or retained as a result of qualifying investments made under the Program.
InvestOhio Support Fund[41]	No provision.	Creates the InvestOhio Support Fund in the state treasury, consisting of application fees paid under the Program. The Fund is to be used to pay the costs of administering the Program.

Capital Access Loan Program

Background

Under the continuing Capital Access Loan Program, the Development Services Agency assists participating financial institutions in making loans to eligible businesses "that face barriers in accessing working capital and obtaining fixed asset financing."[42] When a participating financial institution makes a capital access loan, it must establish a program reserve account. The business receiving the loan is required to pay a certain percentage of the loan amount to the financial institution for deposit in its reserve account. The financial institution must deposit the same amount of its own funds into the reserve account. Under prior law, the Department of Development then disbursed to the financial institution from the Capital Access Loan Program Fund an amount equal to 50% of the principal amount of the loan or, if the borrower is a minority business enterprise, an amount equal to 80% of the principal amount of the loan, for

[39] R.C. 122.86(D).

[40] R.C. 122.86(D).

[41] R.C. 122.86(F).

[42] R.C. 122.602.

deposit into the institution's reserve account.[43] Under continuing law, if any portion of the capital access loan is uncollectible, the financial institution may seek the release of money from its reserve account.[44]

Modifications made by the act

The act modifies the Capital Access Loan Program, as follows:

--The act permits the transfer of money from the Minority Business Enterprise Loan Fund to the Capital Access Loan Program Fund. During any fiscal year of the Development Services Agency, the total amount of money deposited into the Capital Access Loan Program Fund from the other fund cannot exceed $3 million. All money transferred from the Minority Business Enterprise Loan Fund to the Capital Access Loan Program Fund must be used solely for Capital Access Loans to minority businesses.[45]

--Under prior law, the Director of Development was prohibited from approving a capital access loan to an eligible business that exceeded $250,000 for working capital or $500,000 for the purchase of fixed assets. Under the act, the Director of Development Services is instead prohibited from approving *a deposit amount from the Capital Access Loan Program Fund for a capital access loan* that exceeds those respective amounts, referring to them as the "maximum deposit amounts, apparently to recognize that participating financial institutions, not the Director, approve loans, and that the director's role is to approve deposits into an institution's loan reserve fund."[46]

--Additionally, the act changes the amount the Director is to disburse from the Fund for deposit into a financial institution's reserve account. Former law required that the amount *equal* 50% of the principal amount of the loan. Under the act, the amount *cannot exceed* 50% of the principal amount of the loan.[47] If the borrower is a minority business enterprise, former law required that the amount *equal* 80% of the principal amount of the loan. Under the act, the amount *cannot exceed* 80% of the principal amount of the loan.[48]

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[43] R.C. 122.603.

[44] R.C. 122.604 (not in the act).

[45] R.C. 122.601 and 122.80.

[46] R.C. 122.602(E).

[47] R.C. 122.603(D)(1)(a).

[48] R.C. 122.603(D)(1)(b).

--For purposes of the program, a "minority business enterprise" is one that meets the definition of minority business enterprise provided under the continuing Minority Business Development Law.[49] Under the act, a minority business enterprise certified by the existing Minority Business Supplier Development Council also qualifies.[50]

Loans to minority business enterprises

The act increases the amount that the Director of Development Services, with Controlling Board approval, may loan to minority business enterprises unable to finance a proposed economic development project through ordinary financial channels at comparable terms. Under prior law, the amount to be loaned could not exceed 60% of the total amount expended in the procurement or improvement of the particular project. Under the act, the maximum loan amount is 75% of the total amount expended.[51]

Increase limit on Ohio Enterprise Bond issuance

The act increases the limit on "project financing obligations" – i.e., bonds issued by the state to support economic development projects that are not repaid by liquor profits (known as Ohio Enterprise Bonds). Proceeds from the bonds are used to make loans to businesses and other borrowers to acquire fixed assets. The bonds are repaid from other sources specified in the bond proceedings, which may include repayments of loans made from the bond proceeds to eligible borrowers, borrowers' contributions to a reserve fund, or other nontax sources.

Under former law, the state could not issue project financing obligations in a principal amount exceeding $300 million (not counting retired obligations).[52] The act changes the basis for computing the limit such that the state may not issue obligations in a principal amount that would require more than $50 million in annual debt service (principal repayments and interest). In computing the $50 million limit, "make-whole call" redemptions and "other optional prepayments" are not included.[53] The act's likely

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[49] See R.C. 122.71 (not in the act).

[50] R.C. 122.60(F) and 122.603(C).

[51] R.C. 122.76.

[52] R.C. 166.08 and 166.11.

[53] A make-whole call is a provision in bond proceedings allowing the state to retire the bonds before maturity by paying bondholders the outstanding principal amount plus a sum to compensate them for the interest they will not receive because of the early redemption, usually the net present value of the scheduled interest payments that are forgone by the bondholders.

effect is to increase the principal amount of project financing obligations that may be issued.

Third Frontier Commission

The act increases the membership of the Third Frontier Commission from 9 to 11 members by adding the following as members:

(1) The Chief Investment Officer of JobsOhio;

(2) A person appointed by the Governor, with the advice and consent of the Senate, who is to represent the public at large.[54] Under prior law, the Governor appointed six members, each representing a region composed of specified counties.

Other provisions

Voluntary Action Program

The act eliminates the role of the Director of Development Services in helping administer the state's Voluntary Action Program, primarily administered by the Ohio Environmental Protection Agency (EPA).[55] Under continuing law, the EPA Director is required to submit an annual report to the standing committees in each house of the General Assembly responsible for considering environmental and taxation matters regarding the program. Among other items, the report must include information about certain related property tax abatements. Under prior law, the abatements were reported to the EPA Director by the Director of Development based on reports from local governments submitted to the Director of Development. The property tax abatements relate to those granted for property cleaned of contamination and abatements granted for property remediation and improvements that promote job creation and economic development in counties or municipal corporations.[56]

The act eliminates all responsibility of the Director of Development Services to participate in the creation of reports under the program. As a result, the act requires the EPA Director, rather than the Director of Development Services, to compile the information received from local government entities about these tax abatements and include the information in the annual report to the General Assembly. Related to this change, the act requires county auditors to submit annual reports about tax abatements related to property decontamination to the EPA Director rather than the Director of

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[54] R.C. 184.01.

[55] R.C. 3746.35.

[56] See R.C. 5709.87 and 5709.88 (not in the act).

Development Services. It also requires municipal corporations and counties to submit reports regarding the job creation and economic development tax abatements to the EPA Director rather than the Director of Development Services.[57]

The Voluntary Action Program is a program administered by the EPA that allows individuals to investigate and clean potential environmental damage to their property and receive a certificate from the EPA when no further cleanup is required.[58]

Termination of Water and Sewer Commission

The act eliminates the Water and Sewer Commission and the Water and Sewer Fund.[59] As part of the elimination of the Commission, the act also removes the authority of local governments to apply for an advance of money from the Fund and related provisions regarding repayment of such advances.[60]

As part of the elimination of the Commission and Fund, the act eliminates a provision in prior law that required the Director of the Ohio Public Works Commission to allocate to the Sewer and Water Fund the amount of obligations authorized in the second, third, fourth, and fifth years for public infrastructure capital improvement projects for local subdivisions in order to support payments made from the Fund.[61]

Application of "revolving door" ethics law to certain public officials and employees

Continuing law (the "revolving door" statute) generally prohibits former public officials and employees from representing clients before the agency or public body that the person worked for for certain specified periods of time after termination of their tenure at the agency.[62]

The act clarifies that a nonelected public official or state agency employee is not prohibited under the ethics laws from becoming a public official or employee of another state agency or from representing or acting in a representative capacity for the official's or employee's new agency on any matter in which the official or employee personally

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[57] R.C. 5709.882.

[58] Ohio Environmental Protection Agency, Voluntary Action Program, *available at:* http://www.epa.ohio.gov/derr/volunt/volunt.aspx, last visited March 22, 2012.

[59] R.C. 1525.11, 1525.12, and 1525.13 (repealed).

[60] R.C. 929.03, 6103.052, and 6117.062.

[61] R.C. 164.05, 164.06, and 164.08(B)(3).

[62] R.C. 102.03(A).

participated at the official's or employee's former agency. However, the act prohibits a public official or state agency employee, during public employment or for 12 months afterwards, from representing or acting in a representative capacity for the official's or employee's new agency on an audit or investigation pertaining to the official's or employee's new state agency in which the public official or employee personally participated at the official's or employee's former state agency through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or other substantial exercise of administrative discretion.[63]

Additionally, the act clarifies that a nonelected public official or employee of a political subdivision is not prohibited from becoming a public official or employee of a different department, division, agency, office, or unit of the same political subdivision and that such official or employee is not prohibited from representing or acting in a representative capacity for the official's or employee's new department, division, agency, office, or unit on any matter in which the public official or employee personally participated as a public official or employee at the official's or employee's former department, division, agency, office, or unit of the same political subdivision. Under the act, "political subdivision" means a county, township, municipal corporation, or any other body corporate and politic that is responsible for government activities in a geographic area smaller than that of the state.[64]

Historic Building Rehabilitation Tax Credit

The act extends eligibility for the historic rehabilitation tax credit to persons subject to a lease agreement for a historic building and eligible for the federal rehabilitation tax credit. Continuing law establishes a refundable credit against the income tax, corporation franchise tax, dealers in intangibles tax, and the insurance company gross premiums tax. The credit equals 25% of qualified expenditures made for rehabilitating a building of historical significance in accordance with preservation criteria as determined by the State Historic Preservation Officer.

A person applying for a rehabilitation tax credit certificate is required to apply to the Director of Development Services, who evaluates the application with the assistance of the State Historic Preservation Officer. Under prior law, only the owner (the person holding the fee simple interest in a historic building) was eligible to apply for a rehabilitation tax credit, and only the owner's expenditures qualified for the credit.

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[63] R.C. 102.03(A)(8).

[64] R.C. 102.03(A)(9).

The act extends eligibility to "qualified lessees" – persons subject to a lease agreement for a historic building and eligible for the federal rehabilitation tax credit.[65] The state, state agencies, and political subdivisions are specifically excluded from receiving the tax credit as a qualified lessee. The federal rehabilitation tax credit is available to lessees based on qualified rehabilitation expenditures so long as the remaining term of the lease, determined on the date that rehabilitation is completed without regard to any renewal periods, is greater than the federal income tax cost recovery period determined.[66] The federal recovery period is 39 years for non-residential real property and 27.5 years for residential rental real property.[67]

The act also provides that if an owner of a historic building enters into a pass-through agreement with a qualified lessee for purposes of the federal rehabilitation tax credit, the qualified rehabilitation expenditures paid or incurred by the owner after April 4, 2007, are attributed to the qualified lessee. Former law did not allow for such a transfer of qualified rehabilitation expenditures.[68]

HISTORY

ACTION	DATE
Introduced	03-22-12
Reported, S. Finance	04-25-12
Passed Senate (31-2)	05-01-12
Reported, H. Economic & Small Business Development	06-13-12
Passed House (85-5)	06-13-12
Senate concurred in House amendments (30-1)	06-13-12

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[65] R.C. 149.311.

[66] 26 U.S.C. 47.

[67] 26 U.S.C. 168(c).

[68] R.C. 149.311(B).