Ohio Legislative Service Commission

Bill Analysis

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129th General Assembly
(As Passed by the Senate)

Sens. Wagoner and Cafaro, Beagle, Lehner, Manning, Obhof, Widener, Oelslager, Bacon, Balderson, Burke, Coley, Eklund, Faber, Hite, Jones, LaRose, Niehaus, Patton, Peterson, Schaffer, Seitz

BILL 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 to be 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 to be 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.

- 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.

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 ethics laws to nonelected public officials and employees.

- Makes appropriations.

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CONTENT AND OPERATION

Organization and operation of the Department of Development

Renaming the Department

The bill 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 bill does not make the change universally throughout the Revised Code, but only through a universally applicable definition in certain sections.

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

The bill 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 bill 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 current Division of Travel and Tourism within the Department of Development.[4]

Advisory Board

The bill 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 is to consist 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

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[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).

[5] R.C. 122.071.

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 bill. Those members serve staggered terms; thereafter, terms of office are for three years. Each member of the Board is to hold office from the date of the member's appointment until the end of the term for which the member is appointed. Vacancies are to be 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 is to hold 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 is to 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 bill renames the existing 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 the Office of TourismOhio in promoting the state as a travel destination. The Fund is to consist 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 bill 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 is to begin operating in fiscal year 2014, is to be calculated as follows:

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[6] R.C. 122.072.

[7] Section 5.

(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 bill,[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 bill. 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 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.

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

Contractual agreements for tourism promotion

The bill 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 to be 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 bill, 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 is to 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 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

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

[10] R.C. 122.942.

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

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 bill 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 bill 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 bill provides that the Business Assistance Fund is to consist 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 bill changes the permitted uses of the Fund. Under the bill, the Business Assistance Fund must be used to pay expenses related to the administration of the Business Services Division of the Development Services Agency. Current law requires 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.

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[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).

Business Development and Assistance Fund

The bill creates the Business Development and Assistance Fund in the state treasury. Under the bill, 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 to be credited to the Fund.[17]

Development Financing Advisory Council

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

Use of federal Brownfields funds

The bill requires the Director of Development Services to administer all federal funds received under the federal Small Business Liability Relief and Brownfields Revitalization Act.[19] The bill requires that the Director comply with all requirements imposed by the federal act related to the administration of, and application for, the

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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.

[19] 42 United States Code 9601 and 9604.

funds as grants and loans. The bill 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 bill modifies the contractual relationship between JobsOhio and the former Department of Development, as follows:

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

--The bill 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 current law.[22]

--The bill 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]

--Current law states that all contracts between the Director of Development and JobsOhio are subject to Controlling Board approval. Under the bill, only contracts that

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[20] Section 6.

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

[22] R.C. 187.03.

[23] R.C. 187.04.

obligate the Development Services Agency to pay JobsOhio for services rendered are subject to Controlling Board approval.[24]

Use of public money

Existing law governing the operation of JobsOhio provides that the approval or disapproval of awards remains functions of the Department and that all contracts for grants, loans, and tax incentives must be between the Department and the recipient. Under the bill, the awards referenced are limited to awards involving *public money* and the grants, loans, and tax incentives are limited to those involving *public money*.[25]

Public records

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

Under the bill, records created by JobsOhio continue not to be public records, as in existing law. However, whether records received by JobsOhio from another person or entity depends on whether the records, when in the custody of that 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 custody. Otherwise, records received by JobsOhio are not public unless they are designated to be available to the public by contract between JobsOhio and the Director of Development. The bill 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]

Ethics training; ethical conduct statements; gift policy

The bill 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

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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.

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 is to 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 existing 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. The base period currently is the 12-month period that ends when the TCA approves the credit.

The bill 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 bill'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 application and, if they determine that the application warrants consideration by the

[28] R.C. 187.061.

[29] Section 21.

Authority, make that recommendation to the Authority not later than six months after the application is received by the Authority.[30]

The bill 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 Certificate Program

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

Topic	Current 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 current 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 current law.

[30] R.C. 122.17(C)(2)(a); Section 21.

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

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

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

Topic	Current 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 current 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 current law, but also disqualifies any investment of money which is the basis of a tax credit granted under any other provision of state law.

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

Topic	Current law	S.B. 314
Eligible investor[35]	An eligible investor means 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 current 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.
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) Requires 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*);

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

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

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

Topic	Current law	S.B. 314
		• The eligible investor does not owe any outstanding tax or other liability to the state.[38]
Required submissions to the Department[39]	Upon the request of the Director, each enterprise in which a qualifying investment is made under the Program must provide records or other evidence that the enterprise is a small business enterprise that meets the Program's qualifications.	Same as current 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 existing Capital Access Loan Program, the Department of Development 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. And then the Department must disburse to the financial

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

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

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

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

[42] R.C. 122.602.

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 deposit into the institution's reserve account.[43] 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 bill

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

--The bill permits the transfer of money from the existing Minority Business Enterprise Loan Fund to the Capital Access Loan Program Fund. However, 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.[45]

--Currently, the Director of Development Services is prohibited from approving a capital access loan to an eligible business that exceeds $250,000 for working capital or $500,000 for the purchase of fixed assets. Under the bill, the Director 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."[46]

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

--For purposes of the Program, a "minority business enterprise" is one that meets the definition of minority business enterprise provided under the current Minority

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[43] R.C. 122.603.

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

[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).

Business Development Law.[49] Under the bill, a minority business enterprise certified by the existing Minority Business Supplier Development Council also qualifies.[50]

Loans to minority business enterprises

The bill 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. Currently, the amount to be loaned cannot exceed 60% of the total amount expended in the procurement or improvement of the particular project. Under the bill, the maximum loan amount is 75% of the total amount expended.[51]

Third Frontier Commission

The bill 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.[52]

Other provisions

Voluntary Action Program

The bill eliminates the role of the Director of Development in helping administer the state's Voluntary Action Program, primarily administered by the Department of Environmental Protection (EPA).[53] Under current 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 property tax abatements, as 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

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

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

[51] R.C. 122.76.

[52] R.C. 184.01.

[53] R.C. 3746.35.

that promote job creation and economic development in counties or municipal corporations.[54] The bill eliminates all responsibility of the Director of Development to participate in the creation of reports under the Program. As a result, the bill requires the EPA Director, rather than the Director of Development, 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 bill requires county auditors to submit annual reports about tax abatements related to property decontamination to the EPA Director rather than the Director of Development. 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.[55]

The Voluntary Action Program is a program administered by the EPA that allows individuals to investigate and cleanup potential environmental damage to their property and receive a certificate from the EPA when no further cleanup is required.[56]

Termination of Water and Sewer Commission

The bill eliminates the Water and Sewer Commission and the Water and Sewer Fund.[57] As part of the elimination of the Commission, the bill 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.[58]

As part of the elimination of the Commission and Fund, the bill eliminates a provision of law that requires the Director of the Ohio Public Works Commission to allocate the amount of obligations authorized in the second, third, fourth, and fifth years for public infrastructure capital improvement projects for local subdivisions to the Sewer and Water Fund in order to support payments made from the Fund.[59]

Application of ethics laws to certain public officials and employees

The bill 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

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[54] See R.C. 5709.87 and 5709.88 (not in the bill).

[55] R.C. 5709.882.

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

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

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

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

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 participated at the official's or employee's former agency. However, the bill prohibits a public official or state agency employee, during public employment or for 12 months after, 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.[60]

Additionally, the bill 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 bill, "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.[61]

HISTORY

ACTION	DATE
Introduced	03-22-12
Reported, S. Finance	04-25-12
Passed Senate (31-2)	05-01-12

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

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