Ohio Legislative Service Commission

Tom Middleton

Fiscal Note & Local Impact Statement

Bill: Sub. S.B. 314 of the 129th G.A.

Date: June 13, 2012

Status: As Reported by House Economic & Small Business Development

Sponsor: Sens. Wagoner and Cafaro

Local Impact Statement Procedure Required: No

Contents: Renames the Department of Development the Development Services Agency and makes other changes affecting state economic development programs

State Fiscal Highlights

The bill renames the Ohio Department of Development (ODOD) the Development Services Agency (DSA) and makes changes to various economic development programs. The provisions of the bill with the most significant fiscal effects are highlighted below.

- **TourismOhio.** The bill creates the Office of TourismOhio within DSA to promote and market tourism across the state. The bill also establishes a five-year pilot funding mechanism from FY 2014 through FY 2018 that would allow for GRF transfers of up to $10.0 million or more to the Tourism Fund (Fund 5W50) annually to support these activities. The funding is linked to the additional amount of sales tax revenue generated by the tourism industry in these years.
- **Capital Access and Minority Direct Loan Programs.** The bill makes changes to the allowable state share of funding required to make loans under the Capital Access Loan Program. This could increase the number of loans supported with state assistance. The bill also increases the amount that DSA may loan to minority business enterprises under the Minority Direct Loan Program. This change could increase the size of loans issued under the program.
- **166 Direct Loan Program.** The bill specifies that the aggregate debt service must not exceed $50 million in any calendar year. The bill removes current law which limited the aggregate principal amount of these loans to $300 million. This change may increase debt service costs, which would depend on the timing of the issuance, the interest rate that will be paid on the bonds, and the number of years over which they are paid off.
- **Historic Rehabilitation Tax Credit.** The bill modifies qualifying expenditures paid or incurred for the tax credit, which could potentially increase revenue loss from this credit to the Local Government Fund and the Public Library Fund.

- **Business Development and Assistance Fund.** The bill creates the Business Development and Assistance Fund to be used for DSA's operating expenses and costs associated with programs that provide business support or business assistance, including grants, loans, or administrative expenses.
- **Small Business Investment Certificate Program.** The bill establishes a fee that investors must pay when they apply for a small business investment certificate under the InvestOhio tax credit incentive. These fees are to be deposited into the InvestOhio Support Fund created by the bill as a source of funding to administer the initiative.

Detailed Fiscal Analysis

Overview

The bill makes various statutory changes to reflect the realignment of certain economic development programs under the new Development Services Agency (DSA). This analysis provides a brief review of the transition of certain programs under JobsOhio, as well as various development-related activities that will be overseen by DSA as proposed under the bill. The analysis then outlines areas of the bill that have some fiscal effect on the state. Perhaps the most significant of these is the creation of the Office of TourismOhio, including a new funding mechanism for the state's tourism promotion efforts that will rely on additional sales tax revenue derived from these activities. Other significant changes occur in various DSA loan programs and qualification for the Ohio historic rehabilitation tax credit. In addition, the bill requires investors participating in the Small Business Investment Certificate Program to pay a fee that will be used to administer the program.

The bill also includes other provisions with little or no apparent fiscal effect on the state, including the elimination of the Development Financing Advisory Committee and the Water and Sewer Commission. Finally, the bill contains intent language stating that changing the name of the agency to the Development Services Agency should not cause unnecessary expense, and specifically mentions that letterhead, forms, printed materials, and signage referring to the Ohio Department of Development (ODOD) may be used until they are replaced.

Changes to economic development programs under JobsOhio

In order to understand the provisions in this bill, it may be helpful to consider previously enacted changes affecting ODOD and their impact on the state's economic development programming. H.B. 1 of the 129th General Assembly established the JobsOhio to promote economic development in Ohio. The bill also required ODOD to evaluate its current powers, duties, and functions and make recommendations on how ODOD should be restructured to accommodate JobsOhio's new role. In addition, the bill required ODOD to use up to $1.0 million in GRF appropriations to cover start up costs for JobsOhio. Finally, on January 30, 2012, the Controlling Board approved a contract between ODOD and JobsOhio that formalized the relationship between JobsOhio and ODOD. Other than the $1.0 million for startup costs, approximately $1.8 million in additional funds has been made available to JobsOhio for administration of various loan programs overseen by ODOD.

Office of TourismOhio

The bill creates the Office of TourismOhio to promote the state as a travel destination, and also establishes the TourismOhio Advisory Board to advise the office and DSA on tourism promotion strategies. For FY 2014 through FY 2018, the bill establishes a funding mechanism to support these efforts that is based on the growth in sales tax revenue received from certain tourism-related industries. During this five-year period, up to $10.0 million in sales tax proceeds credited to the GRF will be transferred to the Tourism Fund (Fund 5W50). The $10.0 million cap includes an annual inflation adjustment based on the Consumer Price Index – all urban consumers, Midwest region. ODOD staff anticipates that sales tax revenue from these industries will consistently increase annually throughout the duration of the pilot program and beyond. The bill also allows for DSA to enter into cooperative or contractual agreements with organizations or businesses to develop, operate, or participate in tourism-related promotional programs. The bill provides that any excess revenue generated under these contracts be credited to Fund 5W50 and reinvested in ongoing tourism marketing initiatives.

Changes to DSA loan programs

Capital access and minority direct loans

The bill makes changes to the Capital Access Loan and the Minority Direct Loan programs, two separate loan programs that target similar underserved populations, specifically minorities or underprivileged small business owners. Under the current Capital Access Loan Program, DSA must deposit 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 into the reserve account that financial institutions are required to maintain in order to protect against loan defaults. The bill changes these thresholds so that the amount the state deposits with the financial institution cannot exceed 50% of the principal amount, or in the case of a loan to a minority business enterprise, the amount cannot exceed 80% of the principal amount. Presumably, this will allow for the state to commit funding to a greater number of loans under the program.

In a related change, the bill permits a deposit of up to $3.0 million to be made annually into the Capital Access Loan Program Fund (Fund 5S90) from either the Minority Business Enterprise Loan Fund (Fund 4W10), the Facilities Establishment Fund (Fund 7037), or a combination of the two funds. Current law specifies that this cash transfer must come from Fund 7037.

The bill also makes changes to loan thresholds under the Minority Direct Loan Program. This program provides state loans to qualified businesses that are unable to finance a proposed economic development project through ordinary financial channels at comparable terms. The loans must go toward building facilities or acquiring machinery and equipment for projects that will create or retain jobs. The state assistance is in the form of take-out financing, a mechanism that requires the borrower to complete the project using interim financing from a conventional lender before the state assistance is provided. The bill increases the amount that the Director of Development Services, with Controlling Board approval, may loan to minority businesses from an amount that cannot exceed 60% of the total amount expended in the procurement or improvement of the particular project to 75% of the total amount expended. This will allow DSA to make bigger loans to businesses qualifying for assistance under the program.

166 Direct Loans

This loan program provides loans to businesses for land and building acquisition, expansion or renovation, and equipment purchase. The bill replaces the aggregate principal amount of project financing obligations issued for economic development purposes with an aggregate annual debt service limit for those obligations. The bill specifies that the aggregate debt service must not exceed $50 million in any calendar year. This change may increase debt service costs, which would depend on the timing of the issuance, the interest rate that will be paid on the bonds, and the number of years over which they are paid off. Debt service payments are made from accrued interest, bond proceeds, and loan repayments made by private companies receiving loans related to such economic development purposes.

Ohio Historic Preservation Tax Credit

The bill includes expenditures paid or incurred by a "qualified lessee" for purposes of calculation of the Ohio historic rehabilitation tax credit. The tax credit applies against the dealers in intangibles tax, the domestic insurance tax, the foreign insurance tax, the corporate franchise tax, and the personal income tax. "Qualified lessee" means a person subject to a lease agreement for a historic building and eligible for the federal rehabilitation tax credit. If the owner of a historic building enters a pass-through agreement with a qualified lessee for the purposes of the federal rehabilitation tax credit, the qualified rehabilitation expenditures paid or incurred by the owner after April 4, 2007, shall be attributed to the qualified lessee.

Am. Sub. H.B. 153 extended perpetually this tax credit, and changed the aggregate limit on issuance of credits from $60 million per "application period" to $60 million per fiscal year. The limit makes it unlikely this provision would have a fiscal effect in most years. But the provision nevertheless potentially increases the amount of expenditures that may qualify for the calculation of the tax credit, thus potentially increases the revenue loss from this credit, when compared to current law.

Local Government Fund and Public Library Fund

Receipts from the dealers in intangibles tax, the domestic insurance tax, the foreign insurance tax, the corporate franchise tax, and personal income tax are deposited into the GRF. Under permanent law, a portion of GRF tax receipts are subsequently transferred to the Local Government Fund (LGF) and the Public Library Fund (PLF). Am. Sub. H.B. 153 (the operating budget act for FYs 2012 and 2013) fixed the LGF and PLF transfer amounts at predetermined levels so that any increase (or decrease) in tax receipts during the biennium will affect the GRF only. For FY 2014 and subsequent years, transfers to the LGF and PLF will resume based on a fixed percentage, but the applicable percentage is not yet known. The Tax Commissioner will determine, by July 5, 2013, the ratio of FY 2013 transfers to the respective funds to total FY 2013 GRF tax revenues. Subsequent transfers to the LGF and PLF will be based on those respective ratios. The revenue loss to the local government funds in FY 2014 and every year thereafter is predicated upon the potential revenue loss attributable to the provisions of S.B. 314 that modify the Ohio historic rehabilitation tax credit.

New funds

Business Development and Assistance Fund

The bill also creates the Business Development and Assistance Fund (Fund 5LK0) to be used for DSA's operating expenses. This includes providing business support or business assistance, including grants, loans, as well as administrative expenses associated with these various programs. Under H.B. 487, the mid-biennium budget review bill, DSA is appropriated $10.0 million for these purposes under SSR Fund 5LK0 appropriation item 195655, Workforce Development Programs, in FY 2013.

InvestOhio Support Fund

The bill creates the InvestOhio Support Fund to cover administrative expenses associated with the new InvestOhio tax credit initiative established under H.B. 153, the main operating budget act for the FY 2012-FY 2013 biennium. The fund is to consist of fees that are paid by investors when they apply for a small business investment certificate under InvestOhio. The fee is either 0.01% of the investment or $100, whichever is greater, to cover the costs of administering the program. The amount of revenue into the fund will depend on the investment amounts and number of certificates applied for. It is difficult to project revenue from the fees because of the relatively recent establishment of the program. However, based on information from ODOD staff, if the fee was applied starting with the program's inception, the InvestOhio Support Fund would have received approximately $185,000 to date. In addition to the new fee, the bill adjusts eligibility criteria under InvestOhio. These changes are discussed in more detail in the LSC bill analysis. The potential fiscal effect of these changes could be a minimal decline in tax credits authorized, and consequently, a slight increase in revenue annually from the personal income tax to the GRF.

Elimination of the Development Financing Advisory Council

The bill eliminates the Development Financing Advisory Council (DFAC), with the Council's duties subsequently vested either with the Director of Development Services or abolished entirely. The bill also makes related changes to the Economic Development Financing Operating Fund (Fund 4510), which currently covers the administrative costs of DFAC, among other expenses. The bill renames Fund 4510 the Business Assistance Fund and specifies that the fund is to be used to pay for the Business Services Division of DSA. In addition, the bill eliminates the Tax Incentive Program Operating Fund (Fund 4S00) and redirects fees collected from businesses participating in the various tax credit programs, specifically the Job Creation Tax Credit and Job Retention Tax Credit programs, to Fund 4510. Finally, the bill allows for payments from Fund 4510 to JobsOhio for services provided in administering DSA loan programs. The contract approved by the Controlling Board on January 30, 2012, allocated approximately $1.8 million for those services.

Other changes

The bill adds two members to the Third Frontier Commission: (1) the Chief Investment Officer of JobsOhio and (2) a Governor appointee who represents the public at large. Although members of the Commission serve without compensation, they are reimbursed for expenses related to their duties. These expenses are paid from the Third Frontier Research and Development Fund (Fund 7011). The bill also eliminates the currently inactive Water and Sewer Commission, which has not received an appropriation for administrative expenses since FY 2011.

The bill makes several other statutory changes that have minimal to no fiscal effects on the state or political subdivisions. The first of these is a requirement that the JobsOhio Chief Investment Officer and the Director of Development Services recommend approval of tax credits for projects that have already started to the Tax Credit Authority (TCA) before the Authority decides to approve or disapprove tax credits. The state fiscal effects of this change are minimal, since the tax credits' withholding period is not extended after TCA approval, but rather begins earlier upon the recommendation of the JobsOhio Chief Investment Officer and the Director of Development Services. Other provisions in the bill relate to subsequent JobsOhio contracts with DSA, JobsOhio's use of public money, and public records requirements, none of which appear to have any direct fiscal effects.

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