
DEPARTMENT OF DEVELOPMENT

Rename agency as Department of Development

- Changes the name of the Development Services Agency and the Director of Development Services back to the Department of Development (DEV) and Director of Development, respectively.

Brownfield and demolition programs

- Creates the Brownfield Remediation Program to award grants for the remediation of brownfield sites and appropriates \$350 million to the program;
- Creates the Building Demolition and Site Revitalization Program to award grants for the demolition of commercial and residential buildings and revitalization of surrounding properties on sites that are not brownfields and appropriates \$150 million to the program.

Broadband Expansion Program Authority changes

- Limits to the four-year period of 2022 through 2025 the law granting appointed members of the Broadband Expansion Program Authority a monthly stipend that qualifies each member for one year of retirement service credit (but not health care coverage) under the Ohio Public Employees Retirement System (OPERS).
- Repeals the law that allowed up to two Authority members at a time to attend meetings electronically.

Transfer of minority business enterprise and related programs

- Transfers the administration of the minority business enterprise program (MBE), the encouraging diversity, growth, and equity program (EDGE), the women-owned business enterprise program (WBE), the veteran-friendly business procurement program (VBE), and the contractor compliance program from the Department of Administrative Services (DAS) to DEV.
- Removes the Equal Opportunity Employment Coordinator from being the head of a division, and instead requires the Coordinator to report to a position designated by the DAS Director.

Minority Development Financing Advisory Board

- Corrects erroneous cross-references to clarify that the Minority Development Financing Advisory Board is not responsible for administering certain tax credit and grant programs administered by DEV.

Job creation and retention tax credits

- Allows any employer that receives the job creation tax credit (JCTC) to count work-from-home employees when computing the employer's credit amount and when verifying its compliance with the JCTC agreement.

- Requires the state to prioritize job retention tax credit (JRTC) applications that meet certain criteria.

Megaproject tax incentives

- Authorizes the following tax incentives for operators and certain suppliers of a “megaproject” (i.e., a development project that includes at least \$1 billion in investment or creates at least \$75 million in Ohio payroll, both indexed to inflation):
 - Lengthens the maximum term of the JCTC from 15 years to 30 years.
 - Permits the assignment of all or a portion of a megaproject supplier’s JCTC to the megaproject’s operator.
 - Excludes from commercial activity tax (CAT) the gross receipts of a megaproject supplier from sales to a megaproject operator.
 - Lengthens the maximum term of local community reinvestment area (CRA) or enterprise zone (EZ) property tax exemptions to 30 years.

Rural industrial park loan eligibility

- Expands eligibility for loans under the Rural Industrial Park Loan Program to include projects located in any rural area (rather than only economically distressed or labor surplus areas), but specifies that all counties eligible for the program under prior law continue to be eligible.
- Specifies that a rural area is any Ohio county that is not designated as part of a Metropolitan Statistical Area by the U.S. Office of Budget and Management.

Rural growth investment credit

- Authorizes an additional \$45 million in tax credits for insurance companies that make loans to or investments in special purpose rural business growth funds which must loan or invest the funds in certain businesses located in less-populated counties.
- Requires DEV to begin accepting applications from prospective rural business growth funds beginning November 1, 2021.
- Modifies the investment criteria for the new (“program two”) credit allocation as follows:
 - Allows for investment in businesses with fewer Ohio employees or less Ohio payroll if the business is headquartered in a county bordering another state.
 - Increases by one year the time within which a rural business growth fund must fully loan or invest its eligible investment authority and, consequently, decreases by one year the time for which the fund must maintain those loans or investments.
 - Requires 25% of a rural business growth fund’s loans or investments to be in businesses principally located in a county having a population no greater than

- 75,000, and 75% in businesses principally located in a county having a population no greater than 150,000.
- Adjusts the amount a rural business growth fund may invest in a single business.
 - Stipulates the following for all rural business growth funds, including those certified as part of the original (“program one”) credit allocation:
 - The 10% portion of a rural business growth fund’s eligible investment authority that must consist of contributions of the fund’s affiliates may be derived from either direct or indirect loans or investments.
 - Amounts returned to a rural business growth fund and then reinvested in the same business are considered investments in a new business for the purposes of the investment requirements associated with the tax credit.
 - The aggregate amount invested by all rural business growth funds in the same business, including amounts reinvested following return or repayment, must not exceed \$15 million.

Transformational mixed use development (TMUD) tax credit

- Extends by two years the sunset date after which the Tax Credit Authority (TCA) is prohibited from certifying new transformational mixed use development (TMUD) projects, until June 30, 2025.
- Authorizes the TCA to preliminarily approve up to \$100 million in tax credits to property owners and investors in TMUD projects in each of FY 2024 and 2025 (the same annual cap that applied under prior law to FY 2020 to 2022).

Film and theater tax credit

- Revokes eligibility of production contractors (i.e., persons other than a production company that are involved in the production of a motion picture) for the film and theater tax credit.

Meat processing plant grants

- Requires the DEV Director to establish a grant program for meat processing plants, including prescribing the grant application form.
- Specifies that a meat processing plant is a facility that is located in Ohio, was in operation as of July 1, 2021, and provides processing services for livestock and poultry producers.
- Authorizes the owner or operator of a meat processing plant to apply to the Director for a grant and, after receipt of the grant application, requires the Director to review the application and score it based on specified criteria, including project readiness.
- Prohibits the Director from considering certain expenditures for a grant, including improvements to personal residences, nonfarm commercial property, and any other nonfarm structures.

- Prohibits the Director from awarding a grant of more than \$250,000.

Ohio Aerospace and Aviation Technology Committee

- Requires the Ohio Aerospace and Aviation Technology Committee to select its chairperson from among its legislative members.

Rename agency as Department of Development

(R.C. 121.02, 121.03, 122.01, 122.011, 122.60, 122.601, 122.603, 122.86, 122.89, 123.01, 149.311, 166.01, 166.03, 174.01, 174.02, 184.01, 1551.01, 1551.33, 1551.35, 5119.34, 5703.21; Repealed R.C. 184.011, 3735.01, and 5701.15; R.C. 140.01, as amended in Section 130.10; Section 518.20)

The act renames the Development Services Agency (DSA) as the Department of Development (DEV). Similarly, the Director of Development Services is retitled the Director of Development. The change reverses the name change in 2012 by [S.B. 314 of the 129th General Assembly](#). The act does not make the change uniformly throughout the Revised Code. Instead, the change is reflected in several sections addressing DEV's operations, and the act directs that references to DSA and its Director throughout the Revised Code mean the renamed DEV and its Director.

Ongoing DSA operations are to be continued by DEV, including the following:

- All DSA rules, orders, and determinations are to continue as though made by DEV;
- DSA employees continue as employees of DEV;
- DEV must be substituted for DSA in any pending court or agency proceedings to which DSA is a party.

Brownfield and demolition programs

(R.C. 122.65, 122.6511, and 122.6512; Sections 259.10, 259.30, 512.30 and 512.240)

The act creates two programs in DEV to revitalize distressed properties:

- The Brownfield Remediation Program to award grants for the remediation of brownfield sites;
- The Building Demolition and Site Revitalization Program to award grants for the demolition of commercial and residential buildings and revitalization of surrounding properties on sites that are not brownfields.

The act uses prior law's definitions of "**brownfield**" and "**remediation.**" The former is an abandoned, idled, or under-used industrial, commercial, or institutional property where expansion or redevelopment is complicated by known or potential releases of hazardous substances or petroleum. The latter means any action to contain, remove, or dispose of hazardous substances or petroleum at a brownfield.

Program rules and initiation

The DEV Director is required to adopt rules for both programs under the Administrative Procedure Act. The rules must include provisions for determining project and project sponsor eligibility, program administration, and any other provisions the Director finds necessary. The Director must also ensure that both programs are operational and accepting proposals for grants by December 29, 2021.

Program funding and allocation

The act creates a fund for each program, the Brownfield Remediation Fund and the Building Demolition and Site Revitalization Fund, respectively. Each fund consists of moneys appropriated to it by the General Assembly, and any investment earnings on the funds are to be credited back to them. For FY 2022, the act appropriates \$350,000,000 to the Brownfield Remediation Fund and \$150,000,000 to the Building Demolition and Site Revitalization Fund. Any unexpended and unencumbered amounts in the funds at the end of FY 2022 are reappropriated by the act for the same purposes in FY 2023.

The act requires the DEV Director to reserve a portion of any funds appropriated to either program for projects in each Ohio county. The reservations are effective for one calendar year after an appropriation (until June 30, 2022, for the FY 2022 appropriation). The specific reservation requirements are \$1,000,000 per county for the Brownfield Remediation Program, and \$500,000 per county for the Building Demolition and Site Revitalization Program. If an appropriation is insufficient to reserve those amounts, a proportionate amount is to be reserved. After a calendar year passes from the date of an appropriation, the reserved funds lose their reserved status. Those funds, and any other unreserved funds are then available for projects anywhere in the state and awarded on a first-come, first-served basis. Grants awarded from unreserved funds are limited to 75% of a project's total cost.

The Director is permitted to use 2.5% of the funds appropriated to each program in FY 2022, and any amounts reappropriated to FY 2023, to operate the programs.

Broadband Expansion Program Authority changes

(R.C. 122.403; repealed R.C. 122.404)

Authority members' stipend

The act amends the Broadband Expansion Program Authority law established under [H.B. 2 of the 134th General Assembly](#) (which took effect May 17, 2021) by limiting to a four-year period (January 1, 2022, to December 31, 2025) the provision granting the Authority's three appointed members a monthly stipend to qualify each for one year of Ohio Public Employees Retirement System (OPERS) retirement service credit for each year of service as an Authority member. DEV remains responsible for paying the stipends.

As established in H.B. 2, the Authority has five members: the DEV Director or designee, the Director of the Office of InnovateOhio or designee, one member appointed by the Speaker of the House, one member appointed by the Senate President, and one member appointed by the Governor. The appointed members serve four-year terms and may be reappointed.

Under continuing law, all members receive reimbursement for their necessary and actual expenses incurred in performing Authority business, and DEV is responsible for paying all reimbursements. The act adds the further specification that DEV must pay all reimbursements for *meals and expenses*.

Attending meetings remotely

The act repeals the law that allowed members to attend Authority meetings by electronic communication. The law required that (1) at least three members attended the meeting in person at the place where the meeting was conducted, (2) the electronic communication permitted simultaneous communication among all Authority members who attended electronically and in person, and (3) all votes were taken by roll call.

Transfer of minority business enterprise and related programs

(R.C. 9.47, 121.07, 122.92, 125.111, 126.021, and 153.59; with conforming changes in numerous other R.C. sections; Sections 518.10 to 518.16)

On July 1, 2021, the act transfers the responsibility for administering certain programs from the Department of Administrative Services (DAS) and the Equal Opportunity Employment Coordinator to DEV. These programs are the minority business enterprise (MBE) program, the encouraging diversity, growth, and equity (EDGE) program, the women-owned business enterprise program (WBE), the veteran-friendly business procurement program (VBE), and the contractor compliance program. The first four of these programs assist business enterprises owned by certain racial minorities, economically and socially disadvantaged individuals, and women, as well as “veteran-friendly businesses” that meet certain benchmarks related to veteran or active military ownership or employment. Businesses certified under any of these programs are eligible for contract assistance, financial and bonding assistance, and management and technical assistance provided by the state. In addition, state agencies are required to set aside a certain amount of their contracts each year for MBEs. Businesses certified through the EDGE and VBE programs are also afforded certain preferences in competing for state contracts.

The contractor compliance program refers to the programs under which a person desiring to bid on a public improvements contract under R.C. Chapter 153 (public improvements) or 5525 (ODOT construction contracts) may apply to certify that the person is compliant with state and federal affirmative action programs in order to be eligible for the contract, and under which all contractors from whom the state makes purchases are required to have an affirmative action plan on file with the state. These affirmative action programs include the state’s requirement that purchase agreements only be made with contractors with written affirmative action policies. A similar requirement exists for capital improvement projects.

The act also changes the role of the Equal Opportunity Employment Coordinator, an office within DAS.²⁷ Under prior law, the Coordinator was the head of a division within DAS. The act specifies that the Coordinator is no longer the head of a division, instead reporting to a position determined by the DAS Director.

The act contains numerous general transfer of authority provisions. All records, documents, files, equipment, assets, and other materials of the programs are transferred from DAS to DEV. Business related to the programs begun but not completed by DAS on July 1, 2021, must be completed by DEV. No validation, cure, right, privilege, remedy, obligation, or liability is lost or impaired by reason of the transfer. The rules, orders, and determinations of DAS pertaining to the programs continue in effect under DEV until modified or rescinded. Further, no judicial or administrative action or proceeding pending on July 1, 2021, is affected by the transfer, and those actions must be prosecuted or defended in the name of the DEV Director or DEV, as appropriate. When the Equal Employment Coordinator, the DAS Director, or DAS is referred to in any rule, contract, grant, or other document related to the administration of these programs, the reference is deemed to refer to the DEV Director or DEV, as appropriate.

The act exempts the transfer of employees from Ohio's public employees' collective bargaining law. Subject to general layoff provisions, DAS employees are transferred to DEV. Between July 1, 2021, and June 30, 2022, the DEV Director may establish, change, and abolish positions of DEV and assign, reassign, classify, reclassify, transfer, reduce, promote, or demote DEV employees who are not subject to Ohio's public employees' collective bargaining law. This authority includes assigning or reassigning an exempt employee to a bargaining unit classification, but includes provisions if the new position is in a lower classification. These actions are not subject to appeal to the State Personnel Board of Review.

The act also provides that the DEV Director may enter into one or more contracts with private or government entities for staff training and development to facilitate the transfer, and that the contracts are not subject to competitive bidding thresholds.

The act permits the Controlling Board, upon the request of the DEV Director, to increase appropriations for any fund, as necessary, to assist in paying for increases in compensation and salaries as a result of the transfer. The act requires the OBM Director to make budget and accounting changes made necessary by the transfer.

The act also requires DEV, on or before September 1, 2023, to submit a report to the General Assembly and the Governor regarding the effects of the transfer, of the MBE, EDGE, WBE, and VBE programs, including data comparing the efficiency of the programs under DAS versus DEV. The report must include data, to the extent it is available, on the number of businesses certified, the length of time required to process certifications, and the number of complaints received from applicants regarding the process. DAS must cooperate with DEV to provide any data it might have, dating back two years before the effective date of the transfer. The data from DEV must cover the period between July 1, 2021, and July 1, 2023. The data from

²⁷ R.C. 121.04, not in the act.

DAS must cover the period from July 1, 2019, to July 1, 2021. The report also must include information regarding the number of employees transferred and the number of employees laid off pursuant to the transfer under the act.

Finally, the act requires the Director of the Legislative Service Commission to renumber related DAS rules to the appropriate Ohio Administrative Code Section for DEV. Any new rules or amendments to the rules implementing the transfer that are proposed before June 30, 2023, are not subject to the two-for-one requirement, which prohibits certain state agencies from adopting a new regulatory restriction unless it eliminates two or more restrictions.

Minority Development Financing Advisory Board

(R.C. 122.72, 122.73, 122.74, 122.78, 122.79, and 122.82)

The act clarifies that the responsibility for oversight of the diesel emissions reduction grant program and several tax credits, including the film and theater credit, small business investment credit, and opportunity zone fund investment credit, rests with DEV, not the Minority Development Financing Advisory Board. These programs and credits, were administered by DEV under prior law, but certain erroneous cross references suggested that the Board had that responsibility.

Under continuing law, the Board assists DEV in the administration of several minority business financing programs primarily designed to encourage the establishment and expansion of minority business enterprises.

Job creation and retention tax credit

(R.C. 122.17 and 122.171)

The act makes two changes to the job creation and retention tax credits. With respect to the job creation tax credit (JCTC), the act allows employers, even those currently in a tax credit agreement, to count work-from-home employees in computing the JCTC credit amount and verifying its compliance with the agreement. With respect to the job retention tax credit (JRTC), the act requires the Tax Credit Authority (TCA) and the DEV Director to prioritize credit applications that meet certain criteria.

Background

Under continuing law, the TCA is authorized to enter into JCTC and JRTC agreements with employers to foster job creation or retention and capital investment in the state. The amount of the credit equals an agreed-upon percentage of the amount by which the employer's "Ohio employee payroll" (i.e., the compensation paid by the employer and used in computing the employer's tax withholding obligations) exceeds the employer's "baseline payroll" (i.e., Ohio employee payroll for the 12 months preceding the tax credit agreement). The credits may be claimed against the commercial activity tax (CAT), financial institutions tax (FIT), petroleum activity tax (PAT), domestic or foreign insurance company premiums taxes, or personal income tax. If the amount of the credit exceeds the tax otherwise due, the excess is refundable. Each employer must file an annual report in which it reports its number of employees and payroll, among other metrics.

JCTC and work-from-home employees

Continuing law authorizes employers whose JCTC application was approved after September 28, 2017, to treat work-from-home employees the same as employees who work at the employer's project location, as long as the work-from-home employees reside in Ohio and are supervised from the project location. (This is the effective date of the provision in H.B. 49 of the 132nd General Assembly that authorized the inclusion of such employees.) Consequently, the payroll of such work-from-home employees is included in the computation of the credit, and such employees are counted towards any employment and payroll metrics required in the JCTC agreement.

Beginning with JCTC reporting periods ending in 2020, the act extends this authorization to employers whose application was approved before September 28, 2017, allowing those employers to also count such work-from-home employees when computing the employer's credit amount and when verifying compliance with the JCTC agreement.

Priority of JRTC applications

The act requires the TCA and DEV Director, when recommending and approving JRTC applications, to prioritize applications that meet one or more of the following criteria:

- The applicant has not received a JRTC or JCTC for a project at the same location within the preceding five years;
- The applicant is not currently receiving a JRTC or JCTC for any other project;
- The applicant's facility has been operating at the proposed project site for the preceding ten years;
- The project will involve significant upgrades, rather than only routine maintenance, such as an increase in capacity of a facility, new product development, or technology upgrades or other facility modernization;
- The applicant intends to use materials and equipment sourced from Ohio businesses in the project when possible.

The TCA and DEV Director must give greater priority to applications that meet more of the criteria.

Under continuing law, a JRTC application is submitted to the TCA, which forwards the application to the DEV Director, OBM Director, Tax Commissioner, and, if the applicant is an insurance company, Superintendent of Insurance to make a determination on the economic impact of the proposed project. The DEV Director submits recommendations to the TCA, which then makes the final determination of which projects to award a JRTC. The act's criteria must be considered in both the DEV Director's recommendations and the TCA's final decision.

Megaproject tax incentives

(R.C. 122.17, 3735.65, 3735.67, 3735.671, 5709.61, 5709.62, 5709.63, 5709.631, 5709.632, 5751.01, 5751.052, and 5751.091)

The act authorizes several special tax incentives for operators and certain suppliers of a “megaproject,” i.e., a large-scale development that meets certain investment or payroll thresholds. Specifically, the act (1) increases the maximum number of years, from 15 to 30, over which the operator or supplier may receive a JCTC, (2) authorizes a megaproject supplier’s JCTC to be wholly or partially allocated to the megaproject’s operator, (3) authorizes a megaproject supplier, in calculating its CAT liability, to exclude its gross receipts from sales to a megaproject operator, and (4) authorizes local governments to grant a 30-year community reinvestment area (CRA) or enterprise zone (EZ) property tax exemption to a megaproject or property owned by a megaproject supplier.

Qualifying projects and suppliers

Before a business may qualify for any of these enhanced incentives, it must either operate or sell tangible personal property to a “megaproject.” A megaproject is a development project that satisfies all of the following conditions:

1. The operator must compensate the project’s employees at 300% of the federal minimum wage or more. (The federal minimum wage is currently \$7.25 per hour for nonexempt employees, so the wage threshold equals \$21.75 per hour.) The wage threshold is calculated exclusive of employee benefits and must be met at the time the project is approved for a JCTC (see “**Job Creation Tax Credit**,” below).

2. The operator must either make at least \$1 billion in fixed-asset investments in the project or create at least \$75 million in annual Ohio employee payroll (i.e., payroll subject to Ohio income tax) at the project.

3. If the project qualifies on the basis of Ohio employee payroll, the operator must maintain at least \$75 million in annual payroll at the project throughout the term of the JCTC (see “**Maximum term**,” below).

4. The project requires “unique sites, extremely robust utility service, and a technically skilled workforce.”

In addition to the megaproject’s operator, certain suppliers of a megaproject are eligible for the act’s incentives (referred to in this analysis as a “qualifying megaproject supplier”). Specifically, any business that sells tangible personal property may qualify for the incentives if it satisfies both of the following requirements:

1. The business makes at least \$100 million in fixed-asset investments in Ohio;

2. The business creates at least \$10 million in annual Ohio employee payroll and maintains that level of payroll throughout the term of the JCTC (see “**Maximum term**,” below).

Beginning in 2025, and every fifth following year, the Tax Commissioner is required to index for inflation the fixed-asset investment thresholds and the Ohio employee payroll

thresholds required for a project or supplier to qualify as a megaproject and megaproject supplier, respectively. Each new threshold amount is calculated by multiplying the current threshold by the percentage increase, if any, in the gross domestic product (GDP) over the preceding five years and adding that result to the current threshold. The Commissioner must certify the new threshold amounts to the DEV Director and the TCA, which administer the megaproject incentives.

Job Creation Tax Credit

Maximum term

A megaproject operator or qualifying megaproject supplier must be approved by the TCA to receive a JCTC before the operator or supplier may qualify for the act's other incentives. The act increases the maximum number of years that a JCTC may be awarded from 15 to 30 years for a business that is a megaproject operator or qualifying megaproject supplier. As a condition of continuing to receive annual compliance certificates (i.e., tax credit certificates issued following the DEV Director's determination that the project is in compliance with the JCTC agreement) during the term of the JCTC, the act specifically requires the operator or supplier to continue to meet the megaproject qualifications, described above. If those qualifications are not met, the DEV Director is required to notify the Commissioner, presumably to assist the Commissioner in determining whether a megaproject supplier is eligible for the act's CAT exclusion (see "**Commercial activity tax exclusion,**" below). As with other noncompliant JCTC projects, the TCA may reduce the term or amount of a noncompliant megaproject operator's or supplier's JCTC or may require the operator or supplier to repay credits already claimed.

Allocation of supplier's JCTC

If a megaproject supplier is awarded a JCTC, the act authorizes the JCTC agreement to allocate all or a portion of the supplier's credit to the operator of the megaproject to which the supplier sells tangible personal property. The DEV Director is required to issue annual compliance certificates to any operator allocated a portion of a supplier's credit in this manner.

Commercial activity tax (CAT) exclusion

Continuing law imposes the CAT based on a business's taxable gross receipts from sales in Ohio. CAT is remitted on an annual or quarterly basis (referred to as a "tax period") depending on the amount of taxable gross receipts. The act authorizes a megaproject supplier to exclude, in calculating the supplier's taxable gross receipts, gross receipts from the sale of tangible personal property to a megaproject operator, but only if the supplier has been awarded a JCTC and holds a certificate issued by the Tax Commissioner (referred to in this analysis as a "CAT exclusion certificate").

For a megaproject supplier to obtain a CAT exclusion certificate, the megaproject's operator must first file with the Tax Commissioner, by October 1 of each year, a list of megaproject suppliers the operator anticipates will sell tangible personal property to the operator during the following calendar year. The list must include the name, address, and federal tax identification number of each megaproject supplier. The Commissioner will then issue a CAT exclusion certificate to the megaproject operator and to each supplier on that list. If

the legal name or structure of any supplier on that list changes, the operator must, within 60 days of becoming aware of the change, notify the Commissioner, who will issue updated CAT exclusion certificates to the operator and to every supplier. These certificates must be maintained for four years from the date they are issued.

If a megaproject supplier improperly excludes amounts in calculating the supplier's taxable gross receipts for any tax period in which it is not eligible for the exclusion for the entire period, a recoupment charge is imposed on the supplier equal to 0.26% (the general CAT rate) of the supplier's taxable gross receipts received from selling tangible personal property to the megaproject operator during that tax period. A megaproject supplier that is assessed such a charge for three consecutive calendar years is prohibited from claiming the CAT exclusion for any future year.

Property tax exemptions

The act authorizes counties and municipal corporations to grant up to a 30-year EZ or CRA property tax exemption to the site of a megaproject or a site owned and operated by a qualifying megaproject supplier (referred to as a "qualifying site"), provided the megaproject operator or supplier, respectively, has been awarded a JCTC. EZ and CRA exemptions are generally limited to no more than a 15-year term. If either exemption is granted to a qualifying site, the property owner is required to annually certify to the county or municipal corporation that the megaproject operator or supplier holds a JCTC annual compliance certificate. If the operator or supplier does not hold such a certificate, the county or municipal corporation may terminate the exemption beginning with the tax year in which the termination decision is made. The act's property tax exemptions are subject to the approval of the school board of the affected school district if and to the extent such approval is required for other EZ or CRA projects, as described in the summaries of those exemption statutes, below.

Summary of enterprise zones and community reinvestment areas

Under continuing law, counties and municipal corporations may designate areas within the county or municipal corporation as an EZ or a CRA. After an EZ designation is approved by the DEV Director, the county or municipal corporation may then enter into enterprise zone agreements with businesses for the purpose of fostering economic development in the zone.

In contrast, a CRA is more generally established to encourage new construction or the remodeling of existing structures. Similar to an EZ, after a CRA is approved by the DEV Director, the county or municipal corporation may enter into an agreement with a business exempting the increased value of new construction or remodeling of a commercial or industrial structure in the CRA in exchange for the creation or retention of jobs at the structure. (Unlike an EZ, residential construction and remodeling may also qualify for a CRA exemption, but no agreement is required for residential exemptions.)

Rural industrial park loan eligibility

(R.C. 122.23)

The act expands eligibility for loans under the Rural Industrial Park Loan Program to include projects located in any rural area, meaning any Ohio county that is not designated as

part of a metropolitan statistical area by the U.S. Office of Management and Budget. However, it stipulates that any county that was eligible for the program under prior law continues to be eligible under the act.

Under the program, the DEV Director may make loans and loan guarantees for the development and improvement of industrial parks in economically distressed areas or areas with a labor surplus as designated by the Director. The Director must use the Rural Industrial Park Loan Fund to support the program.

Rural growth investment credit

(R.C. 122.15, 122.151, 122.153, 122.154, and 122.156; Section 757.60)

The act authorizes an additional \$45 million in tax credits for insurance companies that make loans to or investments in special purpose “rural business growth funds,” which are investment funds that meet certain eligibility criteria and are certified by DEV to provide capital for businesses with substantial operations in rural areas (referred to as “rural business concerns”). It also modifies the investment benchmarks and other requirements upon which the credit is contingent. Some of the act’s changes apply only to rural business growth funds certified after September 30, 2021 (“program two” funds). Other changes apply to all funds, including those certified before that date (“program one” funds).

Background

Rural growth investment credits may be claimed against the state’s taxes on foreign and domestic insurance companies. The amount of the credit equals 100% of the insurance company’s credit-eligible capital contribution to a rural business growth fund. A “credit-eligible capital contribution” is an investment of cash that either (1) purchases an equity interest in the fund or (2) provides a loan with a maturity of at least five years, level principal repayment, and repayment terms that are independent of the fund’s profitability. The sum of the credit-eligible contributions collected by the rural business growth fund must comprise exactly 60% of the fund’s “eligible investment authority” – which is the amount of capital it agrees to invest in or lend to rural business concerns.

A participating insurance company must claim the credit in four annual installments, each equal to 25% of its credit-eligible capital contribution. The first installment is not available until the expiration of a three-year holding period, which begins tolling after the credit-eligible contribution is approved by DEV and after all amounts comprising the fund’s eligible investment authority have been collected (referred to as the “closing date”). After the holding period, DEV must issue tax credit certificates to the insurance company on the fourth, fifth, sixth, and seventh anniversaries of the closing date. The credit is nonrefundable but, if it is not fully claimed in one year, the excess may be carried forward for up to four years.

Credit cap

Prior law prohibited DEV from certifying more than \$45 million in credit eligible contributions over the lifetime of the rural business growth program. That initial credit allocation was fully awarded shortly after the credit’s enactment in 2018. The act increases the

overall credit cap by \$45 million. Due to the three year holding period, the new credit allocation can be claimed no sooner than FY 2025.

Accepting applications

The process for awarding rural growth investment tax credits is initiated by application of an investment fund that has developed a business plan to invest in rural business concerns (see below). If the application is approved, DEV must certify the applicant as a rural business growth fund and specify the amount of the applicant's eligible investment authority. The act requires DEV to begin accepting applications for certification of program two funds beginning November 1, 2021.

Affiliate contributions

Within 60 days of certification, the rural business growth fund must collect the appropriate amount of credit-eligible capital contributions and the investments of cash that will make up the remainder of the fund's eligible investment authority. Continuing law requires at least 10% of the fund's eligible investment authority to be contributed by affiliates of the fund. The act specifies that, for both program one and program two funds, the 10% affiliate contribution threshold may be met through either direct or indirect contributions.

Timing and duration of investments

Tax credits awarded to the investors of a rural business growth fund are contingent upon the fund making and maintaining a series of loans to or investments in rural business concerns (see below). A program one rural business growth fund must invest at least 50% of its eligible investment authority within one year of the closing date, and 100% within two years of the closing date. DEV is prohibited from awarding tax credit certificates to the investors of a program one fund that fails to meet either or both of these benchmarks.

The act relaxes the investment benchmarks for program two rural business growth funds. A program two fund need only invest 25% of its eligible investment authority within one year of the closing date, 50% within two years of the closing date, and 100% within three years of the closing date. Like program one funds, a program two fund must maintain its investments until the sixth anniversary of the closing date. Therefore, the act decreases by one year the time for which a program two fund must invest its full eligible investment authority. (Under continuing law, if a loan or investment is sold or repaid, it is considered to be "maintained" so long as the fund reinvests or re-loans the returned capital, minus any profits, within one year.)

Border county rural business concerns

A "rural business concern" is a business that has its principal operations in a rural area of Ohio (i.e., a county having a population less than 200,000), has fewer than 250 employees, and had not more than \$15 million in net income (i.e., federal gross income minus federal and state taxes) for the preceding taxable year. Under the law, changed in part by the act, a business has its "principal operations" in Ohio if at least 80% of its employees are Ohio residents or at least 80% of its payroll goes to Ohio residents. A business that does not meet either criterion can still qualify as a rural business concern if it agrees to relocate or restructure in such a way that at least 80% of its employees or 80% of its payroll are in Ohio.

The act allows program two rural business growth funds to make loans to or investments in businesses that have fewer Ohio employees or less Ohio payroll, so long as the business is headquartered in a county that borders another state. Under the act, a business headquartered in a border county has its principal operations in Ohio if at least 65% of its employees are Ohio residents or at least 65% of its payroll goes to Ohio residents. As with the general thresholds, a business that does not meet either criterion can still qualify as a rural business concern if it agrees to relocate or restructure in such a way that at least 65% of its employees or 65% of its payroll are in Ohio. The act's border county employment and payroll thresholds do not apply to loans or investments by program one rural business growth funds.

Geographic location of rural business concerns

The act requires a program two rural business growth fund to invest 25% of its eligible investment authority in rural business concerns having their principal business operations in a county with a population no greater than 75,000 (referred to by the act as "tier three rural areas"), and at least 75% of its eligible investment authority in rural business concerns having their principal business operations in counties with a population no greater than 150,000 ("tier two" and "tier three rural areas"). Investments in rural business concerns having their principal business operations in counties with a population greater than 150,000, but no greater than 200,000 ("tier one rural areas") do not count towards the investment requirements associated with the tax credit to the extent those investments exceed 25% of the fund's eligible investment authority. If a program two fund fails to meet and maintain the investment thresholds prescribed by the act, the credits awarded to the fund's investors are subject to recapture.

Under continuing law, a program one rural business concern must have its principal operations in a county having a population no greater than 200,000.

Limit for investments in one business

Under continuing law, the amount by which a program one rural business growth fund's loans or investments in one rural business concern (or its affiliates) exceeds 20% of the fund's eligible investment authority is not counted for the purposes of compliance with the investment requirements. The act retains that standard for program one funds, but for program two funds instead specifies that investments exceeding \$5 million in the same rural business concern are not counted for the purpose of the investment requirements.

The act also specifies that, for both program one and program two funds, if a loan or investment in a rural business concern is returned or repaid and then reinvested by the fund in the same rural business concern, that reinvestment counts as an investment in a new rural business concern for the purpose of the investment requirements. The act specifies that the aggregate amount of loans or investments by all program one and program two rural business growth funds in the same rural business concern, including amounts reinvested following a return or repayment, must not exceed \$15 million.

Transformational mixed use development (TMUD) tax credit

(R.C. 122.09)

The act modifies an insurance premium tax credit, enacted by [S.B. 39 of the 133rd General Assembly](#), for capital contributions to the construction of a transformational mixed use development (TMUD). TMUDs are multi-purpose construction projects that meet certain minimum building height, square footage, or payroll criteria and that are expected to have a transformational economic impact on the surrounding area. Credits are awarded by the Tax Credit Authority (TCA) through an application process initiated either by the property owner or an insurance company that contributes capital to the project. The amount of the credit depends, in part, on the development costs associated with the TMUD if the applicant is the property owner, or the amount of the capital contribution if the applicant is an insurance company and, in part, on the increase in tax collections at the project site and the surrounding area. More than one person may apply for, and receive a tax credit for the same project, but the total amount of tax credits awarded for a TMUD project must not exceed 10% of the development costs incurred by the property owner.

The act extends by two years the sunset date after which the TCA is prohibited from certifying new TMUD projects, from June 30, 2023, to June 30, 2025. Under the act, the TCA may preliminarily approve up to \$100 million in tax credits in each of FYs 2024 and 2025. The same cap applied, under prior law, to FY 2020 to 2022. However, due to the timing of the enactment of S.B. 39, the TCA did not preliminarily approve any credits in either FY 2020 or 2021. The act revokes the authority of the TCA to preliminarily approve credits for those years and, in effect, carries forward the associated credit allotments to FY 2024 and 2025.

Film and theater tax credit

(R.C. 122.85)

The act revokes the eligibility of production contractors for the film and theater tax credit. Continuing law allows a refundable tax credit for companies that produce all or part of a motion picture or Broadway theatrical production in Ohio and incur at least \$300,000 in Ohio-sourced production expenditures. The credit equals 30% of the company's Ohio-sourced expenditures for goods, services, and payroll involved in the production. A company can claim the credit against the CAT, (FIT), or the personal income tax.

[H.B. 166 of the 133rd General Assembly](#), the FY 2020-FY 2021 budget act, extended eligibility for the credit to production contractors – persons other than the production company that are involved in the production of a motion picture. Production contractors are included in the same credit application and evaluation process as the production company producing the picture. The credit awarded to the production contractor equals 30% of the contractor's actual or estimated Ohio-sourced expenditures incurred in performing services related to the motion picture such as editing, postproduction, photography, lighting, cinematography, sound design, catering, special effects, production coordination, hair styling or makeup, art design, or distribution. Under the act, only the production company is eligible for the credit.

Meat processing plant grants

(Section 701.90)

The act requires the DEV Director to establish a grant program for meat processing plants, including prescribing the grant application form. A meat processing plant is a facility that is located in Ohio, is in operation as of July 1, 2021, and provides processing services for livestock and poultry producers.

The owner or operator of a meat processing plant may apply to the Director for a grant. After receiving a grant application, the Director must review the application and score it based on the following criteria:

1. Whether the grant will improve the applicant's processing efficiencies for livestock and poultry by allowing for the following:

- New equipment, including upgrades to existing equipment;
- New technology, including upgrades to existing technology; and
- Training of personnel.

2. Whether the grant will be used for expansion or new construction for the processing of livestock and poultry, including:

- Areas to confine livestock and poultry;
- Areas for the processing of livestock and poultry; and
- Refrigeration or freezers.

3. Whether the grant will be used for food safety certification or to assist in obtaining cooperative interstate shipment status;

4. Whether the grant will improve harvest services for livestock and poultry producers; and

5. Project readiness.

The Director may not consider the following as eligible for grant funding:

1. Improvements to personal residences, nonfarm commercial property, and any other nonfarm structures;

2. Agricultural tractors, motorized vehicles, and other mobile equipment with an internal combustion engine; and

3. Land purchases.

Meat processing plants awarded a grant must maintain the equipment, technology, plant expansion, or new construction in working and serviceable order for five years after the awarding of the grant. The Director may not award a grant exceeding \$250,000.

Ohio Aerospace and Aviation Technology Committee

(R.C. 122.98)

The act requires the Ohio Aerospace and Aviation Technology Committee to select its chairperson from among its legislative members. A chairperson must be selected for each General Assembly and the term of office of a chairperson lasts for the duration of the chairperson's respective General Assembly term. Prior law required the chairperson to alternate each General Assembly between the first legislator appointed by the President of the Senate and the first legislator appointed by the Speaker of the House.

Under continuing law, the Committee consists of 21 members: three Senators appointed by the President, not more than two from the same political party; three Representatives appointed by the Speaker, not more than two from the same political party; and 15 individuals who represent the aviation, aerospace, or technology industry, the military, or academia, one appointed by the Governor, and the remaining 14 chosen by a majority vote of the six legislative members.