
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 and Director of Development, respectively.

Transfer of minority business enterprise and related programs

- Transfers the administration of the minority business enterprise program, the encouraging diversity, growth, and equity program, the women-owned business enterprise program, and the veteran-friendly business procurement program from the Department of Administrative Services (DAS) to the Department of Development.
- Removes the Equal Opportunity Employment Coordinator from being the head of a division, who instead reports to a position determined 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 the Department of Development.

Job creation tax credit

- Requires the Director of Development to adopt rules establishing alternative job creation tax credit (JCTC) eligibility requirements for businesses that do not meet the minimum employment or payroll thresholds prescribed by administrative rule.
- Limits the total amount of credits awarded under the alternative eligibility criteria to \$25 million per fiscal biennium.
- Allows any employer that receives the JCTC to count work-from-home employees when computing the employer's credit amount and when verifying its compliance with the JCTC agreement.

Small business investment credit

- Reduces the biennial credit allotment for the small business investment credit from \$50 million to \$25 million.

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122.86, 122.89, 123.01, 149.311, 166.01, 166.03, 174.01, 174.02, 184.01, 1551.01, 1551.33, 1551.35, 5119.34, 5703.21; Repealed R.C. 184.011, 3735.01, and 5701.15; R.C. 140.01, as amended in Section 130.10; Section 518.20)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 bill renames the Development Services Agency (DSA) as the Department of Development. Similarly, the Director of Development Services is renamed the Director of

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

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

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

Transfer of minority business enterprise and related programs

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

On July 1, 2021, the bill transfers the responsibility for the administration of certain programs currently under the Department of Administrative Services (DAS) and the Equal Opportunity Employment Coordinator to the Department of Development (DEV) (currently called the Development Services Agency). These programs are the minority business enterprise (MBE) program, the encouraging diversity, growth, and equity (EDGE) program, the women-owned business enterprise program, and the veteran-friendly business procurement program. These programs require state agencies to set aside a certain amount of their contracts each year to award to business enterprises owned by certain eligible individuals and certified under the program. These individuals, respectively, are certain racial minorities, economically and socially disadvantaged individuals, women, and veteran-friendly businesses.

The bill also changes the role of the Equal Opportunity Employment Coordinator, an office created under DAS.¹⁶ Under current law, each office created under this current law provision is the head of a division within the department in which it is created. The bill specifies that the Coordinator is no longer the head of a division, instead reporting to a position to be determined by the DAS Director.

The bill 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 Director of DEV or DEV, as

¹⁶ R.C. 121.04, not in the bill.

appropriate. When the Equal Employment Coordinator, the Director of DAS, 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 bill exempts the transfer of employees from Ohio's public employees' collective bargaining law. And, 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 bill 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 bill 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 bill requires the OBM Director to make budget and accounting changes made necessary by the transfer.

Finally, the bill 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 bill clarifies that the responsibility for oversight of the diesel emissions reduction grant program and several tax credits, including the motion picture and theatre credit, the small business investment credit, and the opportunity zone fund investment credit, rests with the Department of Development, not the Minority Development Financing Advisory Board (MDFAB). These programs and credits, under continuing law, are administered by the Department of Development, but certain erroneous cross references in current law suggest that the MDFAB has that responsibility.

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

Job creation tax credit

(R.C. 122.17; Section 701.20)

The bill makes two changes to the job creation tax credit (JCTC). First, it prescribes an alternative JCTC eligibility process for smaller businesses and earmarks \$25 million in credits each biennium for those businesses. Second, the bill allows employers, even those currently in a JCTC

agreement, to count work-from-home employees in computing its credit and verifying its compliance with the agreement.

Under continuing law, the Tax Credit Authority (TCA) is authorized to enter into JCTC agreements with employers to foster job creation 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 JCTC agreement). The credit 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.

Alternative eligibility requirements

The bill requires the DEV Director to adopt rules, as soon as possible, establishing alternative JCTC eligibility requirements for businesses that do not meet the minimum employment or payroll thresholds but are otherwise eligible for the credit. Current administrative rules limit credit eligibility to businesses that create at least ten full-time equivalent employment positions and generate an additional \$659,750 in annual payroll (175% of the federal minimum wage multiplied by 52,000).¹⁷ The employment and payroll thresholds are not mandated by state law. The Director may change them or establish alternative eligibility requirements at any time through the standard administrative rulemaking procedure.

The bill limits total credits awarded under the alternative eligibility criteria to \$25 million per fiscal biennium. There is no cap on the amount of JCTCs awarded under the general eligibility criteria.

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.

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

¹⁷ Ohio Administrative Code (O.A.C.) 122:7-1-05.

Small business investment credit

(R.C. 122.86)

The bill reduces, from \$50 million to \$25 million, the total biennial credit allotment for the existing income tax credit for investments in smaller businesses, beginning in FY 2022. Under continuing law, the credit is available for an individual, trust, estate, or pass-through entity that acquires an ownership interest (through a cash investment) in a business having assets of \$50 million or less, or annual sales of \$10 million or less, and employing no more than 50 full-time equivalent employees or employing more than half of their U.S. employees in Ohio. To qualify for the credit, the investor must agree to a two-year holding period during which they cannot sell or dispose of the investment. In addition, the business must, within six months of the date the investment is made, spend at least a portion of the investment amount to purchase or acquire assets or to pay employees. The credit equals 10% of the amount of the investment – up to \$1 million.¹⁸

¹⁸ See also, R.C. 5747.81, not in the bill.