



## *Revised Final Analysis\**

*Megan Cummiskey  
and other LSC staff*

*Legislative Service Commission*

### **Am. Sub. H.B. 554**

127th General Assembly  
(As Passed by the General Assembly)

**Reps. Hottinger, Peterson, Skindell, Bacon, Boyd, Brown, Budish, Evans, Flowers, Gardner, Jones, R. McGregor, Redfern, Schlichter, Sears, Yates, Beatty, Bolon, Book, Brady, Celeste, Chandler, Daniels, DeBose, DeGeeter, Dodd, Dolan, Domenick, Dyer, Fende, Foley, Garrison, Gerberry, Gibbs, Goyal, J. Hagan, R. Hagan, Harwood, Heard, Hite, Hughes, Koziura, Letson, Luckie, Lundy, Mallory, J. McGregor, Mecklenborg, Newcomb, Oelslager, J. Otterman, Patton, Sayre, Schindel, Schneider, Setzer, Slesnick, D. Stewart, Sykes, Szollosi, Uecker, Ujvagi, White, Widener, Widowfield, B. Williams, Wolpert, Yuko, Zehringer**

**Sens. Carey, Cafaro, Sawyer, Wilson, Kearney, Fedor, Harris, Niehaus, Padgett, Roberts, Schaffer, Seitz, Spada, R. Miller, Morano, Boccieri, Smith, Mumper, Mason, Schuring**

**Effective date: September 11, 2008; Sections 3, 15, 18, and 19 effective June 12, 2008; certain provisions effective June 12, 2008, and other dates; contains item vetoes**

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### **ACT SUMMARY**

- Authorizes the issuance of \$66 million in general obligations for coal research and development, and appropriates that amount in fiscal year 2009 to be utilized for such purposes.
- Authorizes the Director of the Ohio Coal Development Office to use any money received from any royalties, incomes, or profits paid to the Office to make additional loans, loan guarantees, or grants.
- Modifies the definition of "air quality facility" for projects funded by Ohio Air Quality Development Authority (OAQDA) bonds to include property reducing air contaminants into the air through the use of advanced or renewable energy and any property necessary to produce an air quality facility.

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\* The revision reflects the renumbering of R.C. 3333.81 to R.C. 3333.731, which was necessary because Am. Sub. H.B. 562 also enacted a section with the same number.

- Authorizes the issuance of liquor-backed obligations, the proceeds of which may be used to provide assistance for eligible logistics and distribution projects and eligible advanced energy projects.
- Requires any assistance provided for logistics and distribution or advanced energy purposes to be evidenced by an agreement, which agreement may require recipients to repay the amount of the assistance plus interest for failing to adhere to the terms of the agreement.
- Limits the aggregate amount of obligations that may be issued for eligible advanced energy projects to \$84 million and the aggregate amount of obligations that may be issued for eligible logistics and distribution projects to \$100 million.
- Appropriates \$50 million in fiscal year 2009 and states the intention to appropriate \$25 million in fiscal year 2010 and \$25 million in fiscal year 2011 for eligible logistics and distribution projects.
- Authorizes the OAQDA to make loans and grants for advanced energy projects and provides the OAQDA with rulemaking authority to implement that program.
- Makes capital appropriations to fund advanced energy projects in fiscal year 2009 and states the intention to appropriate no more than \$56 million from bond proceeds in the biennium ending on June 30, 2012 for eligible advanced energy projects.
- Authorizes the Ohio Public Facilities Commission to issue general obligations of not more than \$120 million to finance or assist in the financing of local subdivision public infrastructure capital improvement projects, and appropriates said amount for this purpose for the biennium ending on June 30, 2010.
- Provides for a transfer of \$200 million from the Budget Stabilization Fund to the Local Transportation Improvement Program Fund administered by the Ohio Public Works Commission.
- Creates the Local Infrastructure Development Fund consisting of money from the liquidated Tobacco Use Prevention and Control Foundation Endowment Fund to provide grants for local infrastructure development

and for capital improvement projects and to support broadband initiatives.

- Establishes the Choose Ohio First Co-op/Internship Program to award competitive grants in fiscal years 2010 through 2014 to promote cooperative education and internship programs at public and at private, nonprofit Ohio institutions of higher education. (PARTIALLY VETOED)
- States the Governor's intent to propose and the General Assembly's intent to appropriate at least \$50 million per year in each of fiscal years 2010 through 2014 for the Co-op/Internship Program.
- Extends the historic building rehabilitation tax credit for two additional years, and eliminates the July 1, 2008, to June 30, 2009, application period.
- Limits amount of new credits awarded to \$5 million per taxpayer (or entity) per year.
- Limits the total of all newly authorized credits to \$60 million per year for two additional years.
- Reserves \$45 million of each additional year's total new credit awards for credit applications previously filed but not approved before the former 100-project quota was attained.
- Limits the refundability of newly authorized credits to \$3 million (less any credit applied to reduce first-year tax liability); originally authorized credits, and any new corporation franchise tax credits, remain fully refundable.
- Preserves the eligibility of a nonprofit corporation to be the owner of rehabilitated building for which credits may be awarded.
- Eliminates the cost-benefit analysis from the prior approval criteria, but requires the Director of Development to consider the geographic location of a project site and regional distribution of all rehabilitation tax credits throughout the state when approving applications.
- Establishes the Ohio Bioproducts Development Program and Ohio Biomedical Development Program to be administered by the TFC.

- Would have prohibited any money received under the Ohio Biomedical Development Program to be used to pay the cost of or otherwise support any activities involving human cloning. (VETOED)
- Requires any assistance provided under the Ohio Bioproducts Development Program or Ohio Biomedical Development Program to be evidenced by an agreement and authorizes the TFC to require recipients of assistance to repay the amount of the assistance plus interest for failing to adhere to the terms of the agreement.
- Establishes the Third Frontier Bioproducts Advisory Board and the Third Frontier Biomedical Advisory Board.
- Requires the TFC to establish competitive processes when awarding financial assistance under the new TFC administered programs created by the act.
- Provides for minority outreach in the administration of logistics and distribution projects, advanced energy projects, the Bioproduct Development Program, the Biomedical Development Program, and the Co-op/Internship Program.

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## CONTENT AND OPERATION

### *Coal research and development and Ohio Coal Development Office authority*

(R.C. 1555.03; Sections 5 and 10; R.C. 151.01, 151.07, 1555.01, 1555.02, and 1555.15 (not in the act))

#### *Coal research and development projects*

Article VIII, Section 15 of the Ohio Constitution authorizes the General Assembly to pass laws for the borrowing of money and issuance of general obligations of the state for the purpose of making grants, loans, and loan guarantees for research and development of coal technology to encourage the use of Ohio coal. The aggregate principal amount of such money borrowed and such bonds and other obligations issued is capped at \$100 million outstanding at any given time. Pursuant to this authority, continuing law authorizes the Ohio Air

Quality Development Authority's Coal Development Office to operate to assist in financing coal research and development, coal research and development projects, and coal research and development facilities.<sup>1</sup>

Specifically, the Office may request that the Ohio Public Facilities Commission (OPFC) issue coal research and development obligations. After the OPFC issues these obligations and deposits their proceeds into the Coal Research and Development Fund, the Office may use the proceeds to make loans, loan guarantees, and grants for allowable projects to persons doing business in Ohio and to educational or scientific institutions located in Ohio.

The act authorizes the OPFC to issue and sell the obligations in an amount not to exceed \$66 million and appropriates that amount for coal research and development projects.

**Use of royalties, income, and profits from projects**

Law modified by the act permits the Director of the Office to include as a condition of a coal research and development loan, loan guarantee, or grant contract or agreement that the Director receive a reasonable royalty or portion of the income or profits arising from the developments, discoveries, or inventions resulting from the projects. This money must be credited to the Coal Research and Development Bond Service Fund. The act permits this money to be used for additional loans, loan guarantees, grants, or agreements, in addition to crediting amounts to the Fund.<sup>2</sup>

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<sup>1</sup> "Coal research and development project" generally means any coal research and development or any coal research and development facility of a person doing business in Ohio or of an educational or scientific institution in Ohio with at least part of the cost of the project being paid from a loan or grant, or using a loan guarantee, from the Ohio Coal Development Office. "Coal research and development" generally means research or other inquiry, experimentation, or demonstration directed toward utilizing Ohio coal in an environmentally acceptable manner as a fuel or chemical feedstock. "Coal research and development facility" generally means any property or its modification or replacement for coal research and development that qualifies for grants, loans, and loan guarantees under Article VIII, Section 15 of the Ohio Constitution. (R.C. 1555.02 (not in the act).)

<sup>2</sup> It is not clear whether, pursuant to this provision, the principal and interest on any loans or service charge on any loan guarantees may be used to make additional loans, loan guarantees, grants, or agreements.

## *Expansion of economic development bond issuance authority*

### *Introduction and background*

Pursuant to Article VIII, Section 13 of the Ohio Constitution granting state and local governments the authority to issue special obligations to fund economic development, the General Assembly has enacted law permitting the Treasurer of State to issue special obligations, to be repaid by the net profits from the sales of spirituous liquor and revenue generated from economic development projects ("pledged receipts"), for economic development assistance programs administered by the Department of Development. The act expands that law to permit the issuance of special obligations, to be repaid using pledged receipts, to fund advanced energy projects, logistics and distribution projects, research and development projects, and expanded air pollution control facilities, as described below.<sup>3</sup>

### *Advanced energy projects*

(R.C. 166.01, 166.08, 166.30, and 3706.25 to 3706.29; Sections 11 and 12)

The act authorizes the Ohio Air Quality Development Authority (OAQDA), with the approval of its executive director and the affirmative vote of a majority of its members, to request the Treasurer to issue bonds to provide loans and grants to business and industry in Ohio, state and local government entities and agencies, educational institutions, research organizations and institutions, or any combination of those entities for acquiring, manufacturing, constructing, reconstructing, expanding, improving, or equipping facilities or facility components for energy production, delivery, storage, conservation, and efficiency through advanced energy projects.

The act gives OAQDA the authority to make loans and provide grants for advanced energy projects with the approval of the Controlling Board, the OAQDA Executive Director, and the affirmative vote of a majority of the OAQDA members. The act creates in the state treasury the Advanced Energy Research and Development Fund and authorizes OAQDA to make grants from that Fund and creates in the state treasury the Advanced Energy Research and Development Taxable Fund and authorizes OAQDA to make loans from that Fund. The grants

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<sup>3</sup> The act, in expanding the law governing the issuance of bonds for economic development assistance programs to include advanced energy projects and logistics and distribution projects, also expands the definitions of "allowable costs," "project facilities," and "governmental actions" to include "eligible advanced energy projects" and "eligible logistics and distribution projects." The changes to the definitions appear generally to assimilate such projects into the existing scheme of this continuing law.

and loans are to be used for the purpose of paying allowable costs of eligible advanced energy projects.<sup>4</sup> These funds consist of proceeds of obligations issued

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<sup>4</sup> "Eligible advanced energy projects" means an "advanced energy project," which consists of any technologies, products, activities, or management practices or strategies that facilitate the generation or use of electricity and that reduce or support the reduction of energy consumption or the production of clean, renewable energy for industrial, distribution, commercial, institutional, governmental, research, not-for-profit, or residential energy users, including "advanced energy resources" and "renewable energy resources."

The act defines "advanced energy resources" as:

(1) Any method or any modification or replacement of any property, process, device, structure, or equipment that increases the generation output of an electric generating facility to the extent such efficiency is achieved without additional carbon dioxide emissions by that facility;

(2) Any distributed generation system consisting of customer cogeneration of electricity and thermal output simultaneously, primarily to meet the energy needs of the customer's facilities;

(3) Advanced nuclear energy technology consisting of generation III technology as defined by the Nuclear Regulatory Commission; other, later technology; or significant improvements to existing facilities;

(4) Any fuel cell used in the generation of electricity, including a proton exchange membrane fuel cell, phosphoric acid fuel cell, molten carbonate fuel cell, or solid oxide fuel cell;

(5) Advanced solid waste or construction and demolition debris conversion technology, including advanced stoker technology, and advanced fluidized bed gasification technology, resulting in measurable reductions of greenhouse gas emissions as calculated pursuant to the United States EPA's waste reduction model (WARM).

Also included are any (1) advanced energy manufacturing centers created by the Edison Technology Centers to assist with advanced energy products and providing the exchange of information and expertise, developing workforce training, and encouraging investments in advanced energy manufacturing technology and sustainable operations, (2) university research on any advanced energy resource or educational outreach programs conducted by a not-for-profit corporation formed to address issues affecting the price and availability of electricity and whose members are small businesses, (3) a small business utilizing an advanced energy project or participating in an energy efficiency program or any independent group in Ohio whose express objective is educating small businesses in Ohio regarding renewable energy resources and energy efficiency programs.



for eligible advanced energy projects, and the Director of the OAQDA, with the affirmative vote of a majority of its members, is authorized to credit money to the respective funds in the proportion the Director determines appropriate. Investment earnings of each fund are credited to each fund, respectively. Any repayment of loans made from money in the Advanced Energy Research and Development Taxable Fund must be credited to the Facilities Establishment Fund established under continuing law governing economic development obligations. The Director of Budget and Management must establish and maintain records related to these funds that show (1) the amounts credited to the funds, and (2) that the amounts credited have been expended pursuant to constitutional and statutory authority.

While the act gives OAQDA authority to make loans and grants for advanced energy projects, it also requires OAQDA to consult with the appropriate governmental agencies in determining the eligible advanced energy projects to be assisted and the nature, amount, and terms of the assistance. It further requires the OAQDA to provide the Development Financing Advisory Council (DFAC) the terms of the proposed assistance, and other relevant information DFAC may request, and requires DFAC to make recommendations regarding the appropriateness of that proposed assistance. DFAC may revise its recommendations to reflect any changes in the proposed assistance. The OAQDA must then submit the terms of the proposed assistance and the DFAC recommendations (as amended) to the Controlling Board for approval.

The act states that any grant or loan made for advanced energy purposes must be evidenced by an agreement, containing any terms the OAQDA determines are necessary or appropriate, including performance measures and reporting requirements. The act authorizes the OAQDA to take any action necessary or appropriate to collect or otherwise deal with any assistance made for advanced

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The act defines "renewable energy resources" as solar photovoltaic or solar thermal energy, wind energy, power produced by a hydroelectric facility (which is, generally, a generating facility located at a dam on a river, or on any water discharged to a river, that is within or bordering Ohio or an adjoining state that complies with certain environmental laws, standards, and requirements--further described in the act), geothermal energy, fuel derived from solid wastes (through fractionation, biological decomposition, or other process that does not principally involve combustion), biomass energy, biologically derived methane gas, or energy derived from non-treated by-products of the pulping process or wood manufacturing process. Renewable energy resources include any fuel cells used in the generation of electricity, including a proton exchange membrane fuel cell, phosphoric acid fuel cell, molten carbonate fuel cell, or solid oxide fuel cell, wind turbine located in Ohio's territorial waters of Lake Erie, storage facility promoting the better utilization of a renewable energy resource that primarily generates off-peak, or distributed generation system used by a customer to generate electricity from any such energy.

energy purposes, including requiring a recipient of assistance to repay the amount of the assistance plus interest at a rate of 3% above the federal short-term interest rate, or any rate determined by the TFC.

The act provides that determinations made by the OAQDA under the act that a particular project is an advanced energy project and is consistent with the constitutional and statutory authority under which eligible advanced energy project obligations are issued is conclusive as to the validity and enforceability of the obligations and any related agreements. It provides that advanced energy facilities for industry, commerce, distribution, or research are deemed facilities for the control of air pollution and thermal pollution related to air under the Constitution and gives the OAQDA authority to adopt rules under Chapter 119. to implement this new program.

The act appropriates \$9 million from the Advanced Energy Research and Development Taxable Fund and \$19 million from the Advanced Energy Research and Development Fund in fiscal year 2009 for advanced energy projects. It also appropriates any investment earnings of those funds for such projects, at the discretion of the Director of Budget and Management on the request of the Executive Director of the OAQDA. The act provides that the Governor has informed the General Assembly of his intent to propose appropriations, and the General Assembly intends to appropriate, amounts not to exceed \$56 million for the biennium ending on June 30, 2012 from bond proceeds deposited in the state treasury to the credit of these two funds.

### **Logistics and distribution projects**

(R.C. 166.01, 166.08, 166.25, 166.26, and 184.37; Sections 5 and 9)

The act authorizes the Director of Development to request the Treasurer of State to issue bonds to provide loans to pay allowable costs of eligible logistics and distribution projects.<sup>5</sup> The act authorizes the Director of Development, subject to the approval of the Controlling Board and all other applicable limitations of the law governing economic development programs, to lend money in the Logistics Distribution and Infrastructure Fund to pay for allowable costs of eligible logistics

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<sup>5</sup> The act defines "eligible logistics and distribution projects" as "eligible projects," which are projects to be acquired, established, expanded, remodeled, rehabilitated, or modernized for transportation and logistics and distribution infrastructure purposes. The act defines "transportation logistics and distribution infrastructure purposes" as promoting, providing for, and enabling improvements of ground, air, and water transportation infrastructure comprising Ohio's transportation system--which includes Ohio highways, streets, roads, bridges, railroads carrying freight, and air and water port and port facilities, and all related facilities.

and distribution projects. The Director must consult with appropriate governmental agencies, including the Department of Transportation and the Ohio Rail Development Commission, to determine which projects to assist and the nature, amount, and terms of the assistance.

The act requires the Director to submit to DFAC the terms of the proposed assistance and other requested relevant information, and DFAC must use that information to make recommendations regarding the appropriateness of the assistance. DFAC may revise its recommendations to reflect changes in the proposed assistance the Director may submit to DFAC. The Director must then submit the terms of the proposed assistance--along with DFAC recommendations (as amended)--to the Controlling Board.

The act states that any loan made for logistics and distribution purposes must be evidenced by a loan agreement, containing any terms the Director determines are necessary or appropriate, including performance measures and reporting requirements. The act authorizes the Director to take any action necessary or appropriate to collect or otherwise deal with any loan made for logistics and distribution purposes, including requiring a loan recipient to repay the amount of the loan plus interest at a rate of 3% above the federal short-term interest rate, or any rate determined by the Director.

The act creates the Logistics and Distribution Infrastructure Fund in the state treasury, consisting of: grants, gifts, and contributions of money or rights to money lawfully designated for or deposited into the Fund, all money and rights to money lawfully appropriated and transferred to the Fund (including money received from issuance of obligations backed primarily with liquor profits), and money received from the repayment of loans and recovery on loan guarantees (including any interest) made from the Fund. Any investment earnings on the cash balance of the Fund must be credited to the Fund. Money raised from taxation may not be any part of the Fund.

The act appropriates \$50 million to the Logistics and Distribution Infrastructure Fund in fiscal year 2009 for eligible logistics and distribution projects. It also provides that the Governor has informed the General Assembly of his intent to propose appropriations, and the General Assembly intends to appropriate \$25 million for eligible logistics and distribution projects in fiscal year 2010 and \$25 million in fiscal year 2011.

### **Research and development projects**

(R.C. 166.02 and 166.08)

Continuing law governing the issuance of special obligations, to be repaid by pledged receipts, to fund economic development programs administered by the Department of Development, is authorized pursuant to Article VIII, Section 13 of the Ohio Constitution. That constitutional provision permits, generally, the issuance of such obligations by state and local governments to provide money for economic development. The act expands the law by permitting obligations to be issued for eligible advanced energy projects for the purposes of Article VIII, Section 2p of the Ohio Constitution. The act also declares it to be the policy of this state through the operation of the economic development program, which includes the issuance of special obligations, to assist in and facilitate the establishment or development of eligible projects or assist and cooperate with any governmental agency in achieving that purpose, pursuant to Article VIII, Section 2p. That constitutional provision permits the issuance of (1) obligations for purposes of local public infrastructure capital improvements, research and development projects, and site facility development (general obligations), (2) state-supported and state-assisted institutions of higher education bonds for research and development projects (unspecified obligations), (3) state and local government bonds for research and development projects (unspecified obligations), and (4) state-supported and state-assisted institution of higher education and local government bonds for site and facility development (unspecified obligations).

### **Air pollution control facilities**

(R.C. 166.01)

Under continuing law governing the issuance of special obligations, which are to be repaid by pledged receipts, to fund economic development programs administered by the Department of Development, "air pollution control facilities" are included as public capital improvements that are project facilities for which allowable costs may be paid for eligible projects. The act provides that, for purposes of the definition of "public capital improvements," such air pollution control facilities include solar, geothermal, biofuel, biomass, wind, hydro, wave, and other advanced energy projects, as defined under the act.

**Limitation on obligations; use of liquor profits**

(R.C. 166.11)

Prior law limited the aggregate principal amount of special obligations that may be issued to fund economic development programs to \$500 million, exclusive of project financing obligations.<sup>6</sup> Obligations above this \$500 million could be issued in the principal amount of any such obligations retired by payment and the amounts held or obligations pledged for the payment of the principal amount of any such obligations outstanding. The act raises the \$500 million amount to \$630 million. The act provides that of that \$630 million, the aggregate amount of obligations that may be issued for eligible advanced energy projects is \$84 million and the aggregate amount of obligations that may be issued for eligible logistics and distribution projects is limited to \$100 million.

Additionally, prior law generally prohibited the repayment of obligations with profits from the sale of spirituous liquor above \$45 million in any fiscal year. The act increases this amount to \$63 million in any fiscal year.

**Air quality facility**

(R.C. 3706.01; 3706.03, 3706.04, and 3706.05 (not in the act))

Under continuing law, the OAQDA is generally authorized to assist in the financing of air quality facilities for industry, commerce, distribution, and research (including public utility companies) to create or preserve jobs and employment opportunities in Ohio or improve the economic welfare of Ohioans. To achieve this, the OAQDA is authorized to initiate, acquire, construct, maintain, repair, and operate, air quality projects,<sup>7</sup> make loans and grants to governmental agencies or persons to acquire or construct air quality facilities, issue air quality revenue bonds for the funding of such projects payable from their proceeds, and engage in research and development with respect to air quality facilities.

The act adds to the definition of "air quality facility" any property, device, or equipment that promotes the reduction of emissions of air contaminants into the

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<sup>6</sup> "Project financing obligations" are economic development obligations issued pursuant to section 166.08 of the Revised Code for which bond service charges will not be paid from receipts of the state representing gross profit on the sale of spirituous liquor.

<sup>7</sup> An "air quality project" means any "air quality facility" acquired or constructed or to be acquired or to be constructed by the OAQDA or a government agency or person with all or a part of the cost thereof being paid from a loan or grant from the OAQDA or otherwise paid from the proceeds of air quality revenue bonds (R.C. 3706.01(H)).

ambient air through the generation of clean, renewable energy with renewable energy resources or advanced energy resources and any property, device, structure, or equipment necessary for the manufacture and production of equipment described as an air quality facility.

**Local Subdivision Capital Improvement Projects**

(Sections 14, 15, and 16; R.C. 151.08, 164.01, and 164.08 (not in the act))

Continuing law authorizes OPFC to issue general obligations to finance or assist in the financing of public infrastructure capital improvement projects of local subdivisions, administered by the Ohio Public Works Commission (OPWC). "Capital improvement projects" are defined as the acquisition, construction or reconstruction, improvement, planning, and equipping of roads and bridges; appurtenances to roads and bridges to enhance the safety of animal-drawn vehicles, pedestrians, and bicycles; waste water treatment systems; solid waste disposal facilities; and storm water and sanitary collection, storage, and treatment facilities. "Local subdivisions" are defined as any county, municipal corporation, township, sanitary district, or regional water and sewer district. Proceeds from the sale of these obligations must be deposited into the State Capital Improvements Fund.

The act authorizes the OPFC to issue general obligations of the state in an aggregate amount not to exceed \$120 million, as needed to ensure sufficient money is available in the Fund to pay costs of the state in financing or assisting in financing of local subdivision public infrastructure capital improvements projects, and appropriates this amount out of the Fund for the biennium ending on June 30, 2010. The act requires the appropriations from the State Capital Improvement Fund to be released upon presentation of a request to release those funds by the Director of the OPWC to the Director of Budget and Management.

**Local Transportation Improvement Program**

(Sections 18 and 19; R.C. 164.02, 164.03, and 164.14 (not in the act))

Under continuing law, the Local Transportation Improvement Program (LTIP) is administered by the OPWC and provides grants to local subdivisions for projects for municipal corporations, counties, and townships, as approved by district public works integrating committees and the OPWC. The act requires the Director of Budget and Management, on July 1, 2008, or as soon as possible thereafter, to transfer \$200 million from the Budget Stabilization Fund to the LTIP Fund.

The Governor vetoed the requirement that the transfer occur on July 1, 2008, or as soon as possible thereafter.

**Local infrastructure development**

(R.C. 164.28; Section 13)

The act creates in the state treasury the Local Infrastructure Development Fund consisting of cash transferred from the Jobs Fund created by Section 4 of Sub. H.B. 544 of the 127th General Assembly (Jobs Fund money consists of the proceeds from the liquidation of the Tobacco Use Prevention and Control Foundation Endowment Fund). Money in the Local Infrastructure Development Fund must be used to provide grants for local infrastructure development and for capital improvement projects (see definition of such projects discussed above under "**Local Subdivision Capital Improvement Projects**"). All investment earnings of the Fund must be credited back to it.

On July 1, 2009, or as soon as possible thereafter, the Director of Budget and Management is required to transfer \$80 million from the Jobs Fund to the Local Infrastructure Development Fund to be used by the OPWC for capital improvement projects. Money in the Local Infrastructure Development Fund may also be used for broadband initiatives. The act states that it is the intent of the General Assembly not to compete with the private sector in providing broadband access in Ohio. The OPWC, in conjunction with the public-private partnership known as Connect Ohio, must adopt rules prescribing the manner in which the money is to be distributed to district public works integrating committees.

On or before June 30, 2011, or as soon as possible thereafter, the Director of the OPWC is required to notify the Director of Budget and Management that all projects funded by the Local Infrastructure Development Fund have been completed, and the Director of Budget and Management must transfer the cash balance remaining in the Fund to the General Revenue Fund. Upon completion of the transfer, the Local Infrastructure Development Fund is abolished.

**Choose Ohio First Co-op/Internship Program**

(R.C. 3333.71 to 3333.80; conforming changes in R.C. 3333.38 and 3345.32)

The act establishes the Choose Ohio First Co-op/Internship Program, to be established and implemented by the Chancellor. The new program is to operate in fiscal years 2010 through 2014. Its stated purpose is "to promote and encourage cooperative education programs and internship programs at Ohio institutions of higher education. . .in order to support the growth of Ohio's businesses by providing businesses with Ohio's most talented students and providing Ohio

graduates with job opportunities with Ohio's growing companies." The program must recruit both Ohio residents who have remained in the state and those who have left Ohio to attend out-of-state institutions. It must either, or both, (1) "support the creation and maintenance of high quality academic programs that utilize an intensive cooperative education or internship experience for students" or (2) "assign a number of scholarships to institutions to recruit Ohio residents as students in a high quality academic program." If scholarships are included in an award to an institution of higher education, they are to be awarded as grants to the institutions and then reflected on the students' tuition bills.

The Governor retained the act's establishment of a co-op/internship program, but vetoed the name of the program. Pursuant to the Governor's veto, the program is called the "Ohio Co-op/Internship Program."

**Intent for appropriations**

(Section 17)

The act states that "the Governor has informed the General Assembly of the Governor's intent to propose an appropriation, and it is the intent of the General Assembly to appropriate, for the Choose Ohio First Co-op/Internship Program . . . a minimum of \$50,000,000 each fiscal year from fiscal year 2010 through fiscal year 2014."

**Eligible institutions**

(R.C. 3333.71(C) and (D) and 3333.72)

The Co-op/Internship Program is a competitive grant program. Public two-year colleges (community colleges, technical colleges, and university branches), in addition to state universities, may apply directly, while collaboration with private colleges is limited to nonprofit institutions. Initiatives funded by the program may include those to be implemented by state institutions alone or in collaboration with other public or private colleges and universities. A four-year private, nonprofit college may be the lead applicant for a proposal to be implemented in collaboration with a public college or university.

**"Cooperative education program" and "internship program" defined**

(R.C. 3333.71(A) and (B))

For purposes of the new program, the act defines "cooperative education program" and "internship program" as follows:



**"Cooperative education program"** means a "partnership between students, institutions of higher education, and employers that formally integrates students' academic study with work experience in cooperating employer organizations" and meets all of the following conditions:

(1) Alternates or combines periods of academic study and work experience in appropriate fields as an integral part of student education;

(2) Provides students with both (a) academic credit from the institution of higher education and (b) compensation, in the form of wages or salaries, from the employer;

(3) Evaluates each student's performance in the cooperative position from the perspective of both the institution of higher education and the employer; and

(4) Is part of a degree or certificate program for which a percentage of the total program acceptable to the Chancellor involves cooperative education.

**"Internship program"** means a "partnership between students, institutions of higher education, and employers that formally integrates students' academic study with work or community service experience" through internships of specified and definite duration, and that evaluates each student's performance in the internship position from the perspective of both the institution of higher education and the internship employer. An internship program "may provide" (but presumably is not required to provide) participating students with academic credit and with compensation in the form of wages, salaries, stipends, or scholarships.

### **Selection of awards**

(R.C. 3333.73 and 3333.74(C))

The Chancellor must ask for the Controlling Board's approval of each award selected by the Chancellor. The Chancellor must determine which proposals to recommend for approval each fiscal year, and the amount of the awards, based on the following criteria:

(1) The extent to which the proposal will keep Ohio students in Ohio institutions of higher education;

(2) The extent to which the proposal will attract Ohio students who left Ohio to return to Ohio institutions;

(3) The extent to which the proposal will increase the number of Ohio graduates who remain in Ohio and enter Ohio's workforce;

(4) The quality of the program that is the subject of the proposal and the extent to which additional resources will enhance its quality;

(5) The extent to which the proposal is integrated with the strengths of the regional economy;

(6) The extent to which the proposal is aligned with the Chancellor's ten-year strategic plan;

(7) The extent to which the proposal facilitates the development of high quality academic programs with a cooperative education program or a significant internship program;

(8) The extent to which the proposal is integrated with supporting private companies to fill potential job growth;

(9) The amount of other institutional, public, or private resources, whether monetary or nonmonetary, the proposal pledges to leverage that are in addition to the monetary cost-sharing requirement (see "Matching private funds; waiver" below);

(10) The extent to which the proposal is collaborative with other Ohio institutions of higher education;

(11) The extent to which the proposal is integrated with the institution's mission;

(12) The extent to which the proposal meets a statewide educational need at the undergraduate or graduate level;

(13) The demonstrated productivity or future capacity of the students to be recruited;

(14) The extent to which the proposal will create additional capacity in a high quality academic program with a cooperative education program or significant internship program;

(15) The extent to which the proposal will encourage students who received degrees from two-year institutions to pursue bachelor's degrees;

(16) The extent to which the proposal facilitates the completion of a bachelor's degree in a cost-effective manner;

(17) The extent to which other institutional, public, or private resources that are pledged to the proposal, in addition to the monetary cost-sharing

requirement, will be deployed to assist in sustaining the academic program of excellence;

(18) The extent to which the proposal increases the likelihood that students will successfully complete their degree programs or certificate programs; and

(19) The extent to which the proposal ensures that a student participating in the high quality academic program funded by the Co-op/Internship Program is appropriately qualified and prepared to successfully transition into professions in Ohio's growing companies and industries.

The Chancellor must endeavor to select proposals in such a way that a wide range of disciplines is supported and that all regions of the state benefit from the economic development impact of the Co-op/Internship Program.

Applicants must submit a proposal and other required documentation in the manner and form prescribed by the Chancellor for each award it seeks.

**Initiatives to return or retain Ohio graduate students**

(R.C. 3333.76)

The program can finance both undergraduate and graduate education initiatives. The act specifically requires the Chancellor to encourage proposals for initiatives that recruit Ohio residents who enrolled in colleges and universities outside the state to return to Ohio and enroll as graduate students in high quality academic programs that (1) use cooperative education programs, "significant" internship programs in private industry or institutional laboratories, or similar models involving a variation of cooperative education or internship programs common to graduate education, and (2) are in an educational area, industry, or industry sector of need. The act also authorizes, but does not require, the Chancellor to encourage similar proposals for initiatives that recruit Ohio residents who have received bachelor's degrees from Ohio institutions to remain in Ohio and enroll as graduate students in such programs offered by Ohio institutions.

**Matching private funds; waiver**

(R.C. 3333.74(A) and (B))

Each award under the Co-op/Internship Program must require a pledge of private funds. The pledge must equal at least 100% of the state money awarded in the case of an initiative or scholarships for undergraduate students, and at least 150% of the state money awarded in the case of an initiative or scholarships for graduate students. But the Chancellor may waive this requirement if the Chancellor (1) finds that exceptional circumstances exist to do so, (2) reviews the

proposal with the program's advisory committee (see "Advisory committee" below), and (3) provides an explanation for the waiver to the Controlling Board.

### **Agreements**

(R.C. 3333.75)

Once the Chancellor and Controlling Board approve an award, the Chancellor must require that the institution enter into an agreement governing the use of the award. The agreement must contain the terms the Chancellor determines to be necessary, which must include performance measures, reporting requirements, and an obligation to fulfill pledges of other institutional, public, or nonpublic resources for the proposal. If the institution violates the terms of its agreement, the Chancellor may require it to repay the award, plus interest at the federal short-term rate determined each year by the Tax Commissioner.

If the Chancellor makes an award to a collaborative program or initiative, the Chancellor may enter into an agreement with the collaborating universities or colleges that permits awards to be received directly by the collaborating universities or colleges consistent with the terms of the program or initiative. If there is such an agreement, the terms must be consistent with the requirements described above.

### **Commitment to future awards**

(R.C. 3333.77)

The Chancellor, subject to Controlling Board approval, may commit to giving a proposal preference for future awards beyond a fiscal year or fiscal biennium, but not beyond June 30, 2014 (the end of fiscal year 2014). However, a future commitment must be conditioned on: (1) future appropriations from the General Assembly, (2) the institution's adherence to its agreement with the Chancellor, including its fulfillment of pledges from other institutional, public, or private resources, and (3) a demonstration that the students participating in programs or initiatives or receiving scholarships financed by the award are satisfied with the institutions selected by the Chancellor to offer those programs, initiatives, and scholarships. When a commitment for future awards expires, the institution may reapply.

### **Monitoring and reporting**

(R.C. 3333.78 and 3333.80)

The Chancellor must monitor each initiative for which an award is granted to ensure fiscal accountability, operating progress, and desired outcomes. Not

later than December 31, 2010, and annually thereafter by December 31, the Chancellor must submit to the General Assembly a report on the academic and economic impact of the Co-op/Internship Program. The report must include (1) progress and performance metrics for each initiative that received an award in the previous fiscal year, (2) economic indicators of the impact of each initiative, and all initiatives as a whole, on regional economies and the statewide economy, and (3) the Chancellor's strategy in allocating awards among institutions of higher education and how the actual awards fit that strategy.

**Advisory committee**

(R.C. 3333.731)

The act establishes an advisory committee for the Co-op/Internship Program. The committee must advise the Chancellor on "growing industries well-suited for awards" under the program, and on other matters the Chancellor considers appropriate. The Chancellor must consult with the committee at each of the following times:

- (1) Prior to issuing each request for applications;
- (2) While reviewing applications and before deciding on awards to submit for the Controlling Board's approval; and
- (3) After deciding on awards to submit for the Controlling Board's approval and before submitting them.

**Membership.** The committee must consist of 16 members, as follows:

- (1) The Director of Development;
- (2) Five members appointed by the Governor, including two representatives of academia, two representatives of private industry, and one member of the public;
- (3) Five members appointed by the Senate President, including three members of the Senate, but not more than two from the same political party, one representative of academia, and one member of the public; and
- (4) Five members appointed by the Speaker of the House, including three members of the House, but not more than two from the same political party, one representative of private industry, and one member of the public.

Members of the House and Senate who are appointed to the committee serve for four years or until their legislative terms expire, whichever is sooner.

Other members appointed by the Governor, Senate President, and Speaker of the House serve staggered, three-year terms and may be reappointed.

All of the members must serve without compensation.

**Committee organization and operation.** The committee must select a chairperson and vice-chairperson annually. Only the members who represent academia and private industry are eligible to be selected chairperson and vice-chairperson. However, if any of the members appointed as members of the public are trustees, officers, employees, or students of an institution of higher education, or directors, officers, or employees of a private business, those members also are eligible to be the chairperson or vice-chairperson. The committee annually must rotate selection of the chairperson between the group representing academia and the group representing private industry, and must always split its selection of the chairperson and vice-chairperson between the two groups. One committee member must be selected annually to serve as secretary to record the committee's proceedings.

The committee may adopt bylaws governing its operation, including the frequency of its meetings. The Chancellor must provide the committee meeting space and staff assistance.

**Conflicts of interest.** The act prohibits a member of the committee from participating in discussions or votes concerning a proposed initiative or an actual award under the Co-op/Internship Program that involves an institution of higher education of which the member is a trustee, officer, employee, or student; an organization of which the member is a trustee, director, officer, or employee; or a business of which the member is a director, officer, or employee or a shareholder of more than 5% of the business' stock.

**Sunset Review exemption.** The advisory committee is exempt from the Sunset Review Law,<sup>8</sup> meaning it is not subject to automatic abolishment after a number of years.

### **Historic Building Rehabilitation Tax Credit**

The historic building rehabilitation tax credit is a credit against the income tax (R.C. Chapter 5747.), corporation franchise tax (R.C. Chapter 5733.), and dealers in intangibles tax (R.C. 5707.03(D) and 5725.15). The credit equals 25% of qualified expenditures made for rehabilitating a building of historical significance, and that meets certain historic preservation criteria as determined by the State Historic Preservation Officer.

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<sup>8</sup> See R.C. 101.82 to 101.87, none in the act.

Under prior law, credits were awarded on the basis of two "application periods," the first of which coincided with state FY 2008 and the second of which coincided with FY 2009. For each application period, only 100 applications were to be approved. Applications were to be reviewed for approval or denial in the order in which they were filed.

**Extend credit for tax years 2010 and 2011**

(R.C. 149.311(A)(9))

The historic building rehabilitation tax credit was scheduled to expire June 30, 2009, at the conclusion of the second application period. The act extends the rehabilitation tax credit by adding two additional application periods coinciding with fiscal years ending June 30, 2010, and 2011. But the act also eliminates the ability to apply for credits during the second application period coinciding with FY 2009.

**Application approval process**

(R.C. 149.311(A), (B), and (C))

The act changes the definition of the "owner" of a building, specifically excluding the state or any political subdivision from that definition. Because being an owner is a necessary pre-requisite to obtaining a tax credit under the act, the state or a political subdivision would not be eligible to claim the credit. Otherwise, the act preserves prior law's definition of eligible owners.

The act requires credit applicants to provide an estimate of qualified rehabilitation expenditures that the applicant expects to incur. The Director of Development may require applicants to furnish documentation supporting the estimates. No credit will be allowed on the basis of expenditures above the estimated expenditures on the application. Prior law did not expressly limit credit amounts on the basis of an estimate of qualified rehabilitation expenditures.

**Progress reports; recision of credit certification**

(R.C. 149.311(D)(4))

The act requires all new applicants (i.e., those whose application has not yet been approved) to provide the Director of Development "sufficient evidence of reviewable progress," including a viable financial plan, copies of final construction drawings, and evidence of historic approvals; the evidence of progress must be filed within 12 months after the applicant was notified of credit approval. Within 18 months after that notice, applicants also must provide evidence that the applicant has secured and closed on financing the rehabilitation. If an applicant

fails to do either, the credit approval must be rescinded, and the credit that had been awarded to the applicant becomes available for other qualified applicants. An applicant whose credit approval has been rescinded may file a new credit application.

**Overall limit on credits**

(R.C. 149.311(D))

Under prior law, the Director of Development could approve the first 100 applications for rehabilitation tax credits per fiscal year without limitation on the amount of the credit. The act removes the quota on the number of applications that may be approved, but limits the total amount of credits that the Director may approve to \$60 million per year. (The amount of credit approved during an application period does not imply a negative fiscal effect for the coinciding fiscal year, because credits approved for an application period are not likely to be claimed until a subsequent fiscal year, if claimed at all--a credit may not offset tax liability or generate a refund until after the rehabilitation project is completed.)

**Credits reserved for outstanding applicants**

(R.C. 149.311(D)(3); Section 3(C))

Of the \$60 million in newly authorized credits for each of the new application periods, \$45 million of each period's credit authorization is reserved for applicants who applied for the credit in the first application period (i.e., in FY 2008), but were not approved. To qualify for the reserve, an applicant must have filed a completed application as of March 1, 2008, and not have since withdrawn the application. As with other applicants' rehabilitations, the rehabilitation must satisfy the criteria in continuing law--i.e., it is of a historic building, it satisfies federal rehabilitation standards, and the credit is a "major factor" in the applicant's decision to rehabilitate or to increase its investment in the rehabilitation. The Director of Development may accept from applicants for the reserved credits the applicants' estimates of their qualified rehabilitation expenditures, in conformance with the act's requirement that all new applicants provide such estimates.

If the amount of credits awarded within the \$45 million reserved each application period is less than \$45 million, the remainder is to be made available for applications filed for that application period.

**Cost-benefit test; economic impact and regional balance**

Prior law required the Director of Development and the Tax Commissioner to perform a cost and benefit analysis for each project application. Only those projects that would have resulted in a net revenue gain for the state and local



governments could be approved. The act eliminates this cost and benefit analysis requirement, but requires the Director of Development to consider the potential economic impact and regional distributive balance of the credits throughout the state when approving applications.

### *Tax credits*

(R.C. 5725.151, 5733.47, and 5747.76; Section 3(A))

Under prior law, the rehabilitation tax credit was refundable, which meant if a taxpayer's tax credit exceeded the taxpayer's tax liability, the taxpayer could receive a refund equal to the difference. Additionally, there was no expressed limit on the amount of the credit a taxpayer could claim.

Under the act, the maximum credit that may be claimed by each taxpayer each year is \$5 million. This limit applies only to credits awarded under the two additional application periods, not to credits awarded for the first application period from July 2007 through June 2008.

If the rehabilitation was undertaken by a limited liability company, partnership, S corporation, or other form of "pass-through entity," the \$5 million limit applies to the entity's total credit; each individual owner of the entity (including trusts or estates) may individually claim a share of the credit proportionate to their distributive share of the entity's income, gain, or loss.

The act limits the amount of a credit that may be refunded if a taxpayer claims the tax credit against the income tax or dealers in intangibles tax. (As with the \$5 million credit limit, this refund limit applies only to credits awarded under the two additional application periods, not the first application period from July 2007 through June 2008). A taxpayer may apply any amount, up to \$5 million, against the taxpayer's annual tax liability, but if the amount of the credit exceeds the annual liability and a refund is issued for the difference, the refunded amount may not exceed \$3 million. (For example, if liability is \$4 million and the credit is \$5 million, the credit fully offsets the \$4 million liability and a refund is issued for the remaining \$1 million. But if liability were \$1 million, the liability would be fully offset and a refund would be issued for only \$3 million; the remaining \$1 million may be applied to tax liability due for the next five years.) Any amount that cannot be claimed initially because of the refund limitation may be carried forward and applied to taxes due for up to five succeeding years. If the credit is claimed against the income tax through a pass-through entity, the \$3 million refund limitation is apportioned among the several owners of the entity in proportion to their respective distributive shares.

### **BioProduct and Biomedical development**

(R.C. 184.02 and 184.23 to 184.26)

The act creates the Ohio Bioproducts Development Program and Ohio Biomedical Development Program. The act includes a requirement that assistance under these programs be provided pursuant to an agreement and authorizes the Third Frontier Commission (TFC) to demand repayment of the assistance. These programs will be funded with money from the Jobs Fund. The act also establishes the Third Frontier Biomedical Advisory Board and the Third Frontier Bioproduct Advisory Board to provide advice to the TFC regarding biomedical and bioproduct issues, respectively.

#### **Ohio Bioproducts Development Program**

(R.C. 184.25; Sections 5 and 6)

The act creates the Ohio Bioproducts Development Program, to be administered by the TFC. Under the Program, the TFC must provide loans, loan guarantees, and grants to for-profit and not-for-profit entities to promote, provide for, and enable innovation, development and commercialization of bioproducts, including biopolymers, chemicals, and advanced materials that use biomaterials and renewable agricultural resources, through efforts including agribusiness and agricultural industry in Ohio, state and local governmental entities and agencies, educational institutions, or research organizations and institutions.

#### **Ohio Biomedical Development Program**

(R.C. 184.26; Sections 5 and 7)

The act creates the Ohio Biomedical Development Program, to be administered by the TFC. Under the Program, the TFC must provide loans, loan guarantees, and grants to for-profit and not-for-profit entities to promote, provide for, and enable innovation, development and commercialization of biomedical and biotechnological products, processes and applications, including medical devices, diagnostics, informatics, therapies, and drugs through efforts by and collaboration among and including business and industry in Ohio, state and local governmental entities and agencies, educational institutions, or research organizations and institutions.

The Governor vetoed a provision that would have prohibited any money received under the Program to be used, directly or indirectly, to pay the costs of, or otherwise support any activities involving, human cloning.

**Agreement for assistance and authority to demand repayment**

(R.C. 184.25 and 184.26)

The act states that any assistance granted under the Ohio Bioproducts Development Program or Ohio Biomedical Development Program must be evidenced by an agreement, containing any terms the TFC determines are necessary or appropriate, including performance measures and reporting requirements. The act authorizes the TFC to take any action necessary or appropriate to collect or otherwise deal with any assistance made under those programs, including requiring a recipient of assistance to repay the amount of the assistance plus interest at a rate of 3% above the federal short-term interest rate, or any rate determined by the TFC.

**Jobs Fund**

(R.C. 164.28 and 184.24; Section 8)

The Jobs Fund was established in Section 4 of Sub. H.B. 544 of the 127th General Assembly. That act required the Treasurer of State to liquidate the Tobacco Use Prevention and Control Foundation Endowment Fund in a prudent manner. The Treasurer was to deposit the lesser of \$40 million or 14.8% of the proceeds from the liquidation into the Tobacco Use Prevention Fund and the remaining proceeds into the Jobs Fund, both of which were created in Section 4 of Sub. H.B. 544.

For fiscal year 2009, the act appropriates \$20 million for the Bioproducts Development Program. The act also states that the Governor has informed the General Assembly of the Governor's intent to propose appropriations, and it is the General Assembly's intent to appropriate \$20 million in fiscal year 2010 and \$10 million in fiscal year 2011 for the Bioproducts Development Program. The Governor and the General Assembly express similar intent with respect to the Biomedical Development Program: \$40 million in fiscal year 2010 and \$20 million in fiscal year 2011.

The act provides that money in the Jobs Fund must be used by the TFC to support the Ohio Bioproducts Development Program and the Ohio Biomedical Development Program. Money in the Fund may also be used to provide cash transfers to the Local Infrastructure Development Fund created by the act (see discussion above under "**Local infrastructure development**").

On June 30, 2011, or as soon as possible thereafter, the Director of Budget and Management is required to transfer the cash balance in the Jobs Fund to the

General Revenue Fund. Upon completion of the transfer, the Jobs Fund is abolished.

**Third Frontier Biomedical Advisory Board and Third Frontier Bioproducts Advisory Board**

(R.C. 184.23 and 184.231)

The act creates the Third Frontier Biomedical Advisory Board to provide general advice to the TFC regarding biomedical issues and the Third Frontier Bioproducts Advisory Board to provide general advice to the TFC regarding bioproduct issues. The advice must be made, in consideration of the recommendations of the Ohio Agriculture to Chemicals, Polymers, and Advanced Materials Task Force.

The Biomedical Board is to consist of the following 11 members selected for their biomedical knowledge and experience:

- (1) Two members, appointed by the Governor;
- (2) Two members, appointed by the Speaker of the House of Representatives, one of whom may be recommended by the Minority Leader of the House of Representatives;
- (3) Two members, appointed by the President of the Senate, one of whom may be recommended by the Minority Leader of the Senate;
- (4) The Director of Development or the Director's designee.

The Bioproducts Board is to consist of the following seven members selected for their bioproduct knowledge and experience:

- (1) One member, appointed by the Governor;
- (2) Two members, appointed by the Speaker of the House of Representatives, one of whom may be recommended by the Minority Leader of the House of Representatives;
- (3) Two members, appointed by the President of the Senate, one of whom may be recommended by the Minority Leader of the Senate;
- (4) The Director of Development or the Director's designee;
- (5) The Director of Agriculture or the Director's designee.

All members of both Boards serve at the pleasure of their appointing authorities and a vacancy on each Board must be filled in the same manner as the original appointment. The Governor may remove any member of either Board for malfeasance, misfeasance, or nonfeasance after a hearing in accordance with Ohio's Administrative Procedure Act (R.C. Chapter 119.). Membership on the Third Frontier Advisory Board does not prohibit membership on the new Boards. Each Board must select a chairperson from among its members and a majority of Board members constitutes a quorum. No action may be taken by either Board without an affirmative vote of a majority of its members.

Members of each Board are not to act as representatives of any specific disciplinary, regional, or organizational interest. Members must represent a wide variety of experience valuable in technology research and development, product process innovation and commercialization, and creating and managing high-growth technology-based companies.

Board members are to serve without compensation, but must receive reasonable and necessary expenses incurred in the conduct of Board business. All the Board members must file financial disclosure forms in accordance with Ohio Ethics Law (*see* R.C. 102.02, not in the act). The Department of Development must provide office space and facilities for each Board.

The act also provides that the designee of the Director of Development who is serving on the Biomedical Advisory Board may also serve on the Bioproducts Advisory Board. No other member of the Biomedical Advisory Board may also serve on the Bioproducts Advisory Board.

### **Sunset provisions**

(Sections 20 and 21)

The act provides that the sections of law creating the Ohio Bioproducts Development Program, Ohio Biomedical Development Program, the Third Frontier Biomedical Advisory Board, and the Third Frontier Bioproducts Advisory Board, and the section of law specifying the uses of the Jobs Fund are repealed effective June 30, 2011.

The act provides that the section of law creating the Local Infrastructure Development Fund is repealed effective June 30, 2013.

**Third Frontier Commission competitive processes**

(R.C. 184.37)

The act requires the Third Frontier Commission, in consultation with the Third Frontier Economic Stimulus Advisory Board, to establish competitive processes for the purpose of awarding financial assistance for projects funded under the Ohio Bioproducts Development Program and the Ohio Biomedical Development Program.<sup>9</sup>

**Minority outreach for new programs**

(R.C. 166.27, 184.174, 3333.79, and 3706.30; R.C. 123.152 and 184.17 (not in the act))

The act requires outreach activities in Ohio that seek to include minorities<sup>10</sup> in the logistics and distribution, advanced energy, and Choose Ohio First Co-op/Internship programs. These outreach activities under each program, as described below, include:

(1) Identifying and partnering with historically black colleges and universities;

(2) Working with higher education institutions in Ohio to support minority faculty and students involved in the fields of logistics and distribution, the fields of science and engineering that address advanced energy, and cooperative and intern programs, respectively;

(3) Developing a plan to contact by telephone minority-owned businesses and entrepreneurs and other economically disadvantaged businesses (logistics and distribution or advanced energy) or minorities or other economically

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<sup>9</sup> No such Third Frontier Economic Stimulus Advisory Board exists in law and is not being created by the act. The reference should refer to the Third Frontier Bioproduct Advisory Board and the Third Frontier Biomedical Advisory Board for purposes of awarding assistance under the respective programs.

<sup>10</sup> "Minority" means a U.S. citizen who is a member of one of the following economically disadvantaged groups: Blacks or African Americans, American Indians, Hispanics or Latinos, and Asians (R.C. 184.17). For purposes of the logistics and distribution program and the advanced energy program, the minority must be a resident of Ohio. Under those two programs, "minority" also includes an individual who is economically disadvantaged and a resident of Ohio; for the purpose of the Choose Ohio First Co-op/Internship Program, "minority" includes an individual who is economically disadvantaged.

disadvantaged individuals (Choose Ohio First Co-op/Internship) to notify them of opportunities to participate in the programs;

(4) Identifying minority professional and trade associations and economic development assistance organizations to notify of the programs;

(5) Partnering with regional councils to foster local efforts to support: (a) minority-owned businesses or otherwise identify networks of minority-owned businesses, entrepreneurs, and individuals operating locally for logistics and distribution projects, (b) minority-owned technology businesses or otherwise identify networks of minority-owned technology businesses, entrepreneurs, and individuals operating locally for advanced energy projects, and (c) minority participation in the Choose Ohio First Co-op/Internship Program;

(6) For logistics and distribution and advanced energy projects, identifying minority firms and notifying them of the opportunities that exist within the investment community, including the Ohio Venture Capital Authority.

All of these outreach efforts (logistics and distribution, advanced energy, and Choose Ohio First Co-op/Internship programs), to the extent possible, must be conducted in conjunction with the Encouraging Diversity, Growth, and Equality (EDGE) Program--which is generally meant to facilitate access to state government contracts and business services for certain disadvantaged Ohio businesses.

The act also mandates certain reporting related to minority participation in logistics and distribution projects, advanced energy projects, the Bioproduct Development Program, and the Biomedical Development Program. The act requires publication of annual reports, which include: (1) details of the awards of assistance provided pursuant to those projects and programs, (2) the status of the recipients' projects funded in previous years, and (3) the amount of awards for projects in economically distressed areas, and if ascertainable, the impact of those awards on the economically distressed areas.

### **Effective dates**

(Sections 4 and 22)

Certain provisions of the act provide for appropriations for current expenses of the state or rely on those appropriations for current expenses in order to be implemented. Therefore, those provisions go into immediate effect pursuant to Article II, Section 1d of the Ohio Constitution and R.C. 1.471. The affected sections are:

(1) R.C. 164.28--creation of the Local Infrastructure Development Fund;

(2) R.C. 166.01, 166.02, 166.08, 166.11, 166.25, 166.26, 166.27, and 166.30--creation of the loan and grant programs to be administered by the Department of Development and the Ohio Air Quality Development Authority;

(3) R.C. 184.02, 184.174, 184.23, 184.231, and 184.24 to 184.26--Ohio Bioproducts Development Program, Ohio Biomedical Development Program, Third Frontier Biomedical and Bioproducts Advisory Boards, and permitted uses of the Jobs Fund;

(4) R.C. 184.37--creates competitive processes for the various assistance programs established in the act;

(5) R.C. 1555.03--loans and grants by the Ohio Coal Development Office;

(6) R.C. 3706.01--changes definition of air quality facility;

(7) Section 5 of the act appropriating amounts in favor of the Department of Development.

(8) Sections 18 and 19 of the act transferring money from the Budget Stabilization Fund to the Local Transportation Improvement Program Fund.

Because they are essential to the implementation of a tax levy, the amendments to the rehabilitation tax credit law are not subject to referendum and take immediate effect pursuant to Article II, Section 1d of the Ohio Constitution, although some provisions are delayed, as explained above.

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## HISTORY

ACTION	DATE
Introduced	05-12-08
Reported, H. Finance & Appropriations	05-21-08
Passed House (88-9)	05-21-08
Reported, S. Finance & Financial Institutions	05-27-08
Passed Senate (30-2)	05-28-08
House concurred in Senate amendments (89-5)	05-29-08

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