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*Bill Analysis*  
*Legislative Service Commission*

**S.B. 335**  
127th General Assembly  
(As Introduced)

Sen. Carey

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**BILL 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 grants, loans, and loan guarantees for coal research and development.
- Authorizes the Director of the Ohio Coal Development Office to use any money received from the repayment of loans or service charges for loan guarantees and from any royalties, incomes, or profits paid to the Office to make additional loans, loan guarantees, or grants.
- Authorizes the issuance of obligations under the economic development program, the proceeds of which may be used for the purpose of paying or making loans for eligible logistics and distribution projects and eligible advanced energy projects.
- 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.
- 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 Air Quality Development Authority (OAQDA) to make loans and grants for advanced energy projects and provides the OAQDA with rulemaking authority to implement these loans and grants.
- Increases the aggregate principal amount of obligations that may be issued to fund economic development programs from \$500 million to \$630 million, and increases the amount of money that may be used to repay these obligations using spirituous liquor proceeds in any fiscal year from \$45 million to \$63 million.
- 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 improvements projects, and appropriates said amount for this purpose for the biennium ending on June 30, 2010.
- States the intention to appropriate \$100 million in fiscal year 2010 and \$100 million in fiscal year 2011 for highway capital facilities and projects.
- States the intention to appropriate \$100 million in fiscal year 2010 and \$100 million in fiscal year 2011 to be used for grants to local subdivisions for Local Transportation Improvement Program-related projects, supported by transfers from the Highway Operating Fund in annual amounts to be determined by the Director of Budget and Management.
- 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.
- Establishes the Co-op/Internship Program, as part of the Ohio Innovation Partnership, 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.
- States the intention 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 credits awarded to \$5 million per project and \$60 million per year for all projects.
- Eliminates the cost-benefit analysis from the current 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.
- Makes the credit nonrefundable for 2010 and 2011, except for the corporate franchise tax credit, which will remain refundable.
- Establishes the Ohio Bioproducts Development Program and Ohio Biomedical Development Program to be administered by the Third Frontier Commission.
- Establishes the Third Frontier Economic Stimulus Advisory Board.

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## CONTENT AND OPERATION

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

(R.C. 1555.03; Sections 5 and 12; R.C. 151.01, 151.07, 1555.01, 1555.02, and 1555.15 (not in the bill))

### *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, current 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 bill 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**

Current law 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 bill 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 bill).)

<sup>2</sup> It is not clear whether 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 liquor and revenue generated from economic development projects ("pledged receipts"), for economic development assistance programs administered by the Department of Development.

The bill expands the current 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 15, 16, and 17)

The bill 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 bill 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 bill creates in the state treasury the Advanced Energy Research and Development Fund and authorizes OAQDA to make grants from that Fund and

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<sup>3</sup> The bill, in expanding the current 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 the law.

creates in the state treasury the Advanced Energy Research and Development Taxable Fund and authorizes OAQDA to make loans from that Fund. The grants 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 bill 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

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 bill 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 bill provides that determinations made by the OAQDA under the bill that a particular project is an advanced energy project and is consistent with the

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businesses in Ohio regarding renewable energy resources and energy efficiency programs.

The bill 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 bill), 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. Excluded from being an advanced energy project is any project that uses coal.



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 bill 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 bill 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, and 166.26; Sections 5 and 11)

The bill 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 bill authorizes the Director of Development, subject to the approval of the Controlling Board and all other applicable limitations, to lend money in the Logistics Distribution and Infrastructure Fund to pay for allowable costs of eligible logistics 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 bill requires the Director to submit to DFAC the terms of the proposed assistance for an eligible logistics and distribution project and other requested

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<sup>5</sup> The bill 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 bill 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.

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 is required to submit the terms of the proposed assistance--along with DFAC recommendations (and any changes to them)--to the Controlling Board.

The bill creates the Logistics and Distribution Infrastructure Fund in the state treasury, consisting of: grants, gifts, and contributions of money or rights of money lawfully designated for or deposited into the Fund, all money and rights of 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 bill appropriates \$50 million to the Logistics and Distribution Infrastructure Fund Group 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)

Current 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 bill 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 bill 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 such purpose, pursuant to Article VIII, Section 2p. That 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 current law governing the issuance of special obligations--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 bill 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 bill.

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

(R.C. 166.11)

Current law limits 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 may be issued in the amount of the principal of any such obligations retired by payment and the amounts held or obligations pledged for the payment of the principal of any such obligations outstanding. The bill raises this amount to \$630 million. The bill 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, current law generally prohibits the repayment of obligations with profits from the sale of spirituous liquor above \$45 million in any fiscal year. The bill increases this amount to \$63 million in any fiscal year.

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

### **Local Subdivision Capital Improvement Projects**

(Sections 18, 19, and 20; R.C. 151.08, 164.01, and 164.08 (not in the bill))

Current law authorizes the 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 bill 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 bill 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.

### **Highway capital improvements**

(Section 14; R.C. 151.06 and 5528.53 (not in the bill))

Under current law, the OPFC is authorized to issue obligations to pay the costs of capital facilities and projects--highway capital improvements limited to highways, including those on the state highway system and their urban extensions, those within or leading to public parks or recreation areas, and those within or leading to municipal corporations. The proceeds of these obligations must be deposited into the Highway Capital Improvements Fund.

The bill provides that the Governor has informed the General Assembly of his intent to propose appropriations, and the General Assembly intends to appropriate, \$100 million in fiscal year 2010 and \$100 million in fiscal year 2011 to this Fund for highway capital facilities and projects. The bill provides that those appropriations will be supported by the issuance of general obligations.

### **Local Transportation Improvement Program**

(R.C. 5537.141; Section 13; R.C. 164.02 and 164.14 (not in the bill))

Under current 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 bill provides that the Governor has informed the General Assembly of his intent to propose appropriations, and the General Assembly intends to appropriate \$100 million in fiscal year 2010 and \$100 million in fiscal year 2011 for this program. It provides that transfers from the Highway Operating Fund to the LTIP Fund support these appropriations.

The bill requires the Ohio Turnpike Commission to pay to the state to the credit of the Highway Operating Fund an annual amount to be determined by the Director of Budget and Management to be used for the required purposes of the Highway Operating Fund, but may not exceed \$20 million payable in each calendar year. The bill provides that the obligation to make these payments will be evidenced by an agreement between the Commission, the Office of Budget and Management, and the Department of Transportation, which must be entered into not later than September 30, 2008 and terminate not later than December 31, 2030. The agreement must contain the obligation of the Commission to make payments from revenues available after satisfying its debt obligations and covenants under any outstanding bond proceedings and a schedule for making periodic payments during the year and the manner in which payments are to be made.

### **Local infrastructure development**

(R.C. 164.28)

The bill 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.

### **Ohio Innovation Partnership Co-op/Internship Program**

(R.C. 3333.71 to 3333.80; conforming changes in R.C. 3333.38, 3333.68 to 3333.70, and 3345.32)

#### **Background**

The Ohio Innovation Partnership was established by the operating budget act for the 2007-2009 biennium, Am. Sub. H.B. 119 of the 127th General Assembly. Administered by the Chancellor of the Board of Regents, it currently consists of two programs: the Choose Ohio First Scholarship Program and the Ohio Research Scholars Program. Both are competitive grant programs that are to make awards to state universities for initiatives that recruit students and scientists in the fields of science, technology, engineering, mathematics, and medicine. The programs' stated purpose is to enhance regional educational and economic strengths and meet the needs of the state's regional economies.

Awards may be granted for initiatives to be implemented by a state university alone or in collaboration with other state institutions of higher education, private Ohio universities or colleges, or other public or private Ohio entities. If the Chancellor makes an award for an initiative to be implemented in collaboration with other public or private Ohio institutions of higher education, the collaborating institutions may receive some portion of the award directly.<sup>7</sup>

#### **New Co-op/Internship Program**

(R.C. 3333.72)

The bill establishes a third component of the Ohio Innovation Partnership, known as the 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

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<sup>7</sup> R.C. 3333.61, not in the bill.

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.

**Intent for appropriations**

(Section 21)

The bill 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 Ohio Innovation Partnership 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)

Like the existing components of the Ohio Innovation Partnership, the Co-op/Internship Program is a competitive grant program. But unlike the existing components, 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 bill 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 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; 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 bill 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 bill 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 3333.79)

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. 3333.80)

The bill 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, 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, 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 bill 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.

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

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

The existing historic building rehabilitation tax credit is scheduled to expire June 30, 2009. The bill extends the rehabilitation tax credit for fiscal years ending June 30, 2010, and 2011. The bill also eliminates the ability to apply for credits during the period from July 1, 2008 through June 30, 2009.

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

**Application approval process**

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

The bill changes the definition of the "owner" of a building, specifically excluding the state or any political subdivision or non-profit corporation from that definition. Because being an owner is a necessary pre-requisite to obtaining a tax credit under the bill, the state, a political subdivision, and a non-profit organization are not eligible to claim the credit.

The bill 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 those estimated on the application. Currently, credits may be granted on the basis of the expenditures ultimately paid, regardless of amount.

**Overall limit on credits**

(R.C. 149.311(D))

Under current law, the Director of Development may approve the first 100 applications for rehabilitation tax credits per fiscal year without limitation on the amount of the credit. The bill removes the limitation 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.

Current law requires the Director of Development and the Tax Commissioner to perform a cost and benefit analysis for each project application. Only those projects that will result in a net revenue gain for the state and local governments may be approved. The bill 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)

Under current law, the rehabilitation tax credit is refundable, which means if a taxpayer's tax credit exceeds the taxpayer's tax liability, the taxpayer may receive a refund equal to the difference. Additionally, there is no limit on the amount of the credit a taxpayer may claim.

Under the bill, the maximum credit that may be claimed is \$5 million for each rehabilitation project approved for the credit.

The credit available under the income tax and dealers in intangibles tax is nonrefundable for tax years 2010 and 2011; i.e., if a taxpayer's credit exceeds the taxpayer's liability, the difference is not refunded. Instead, there is a five-year carry-forward, permitting the taxpayer to apply the difference toward its tax due for the five following years. Because the corporate franchise tax is being phased out, the credit against that tax remains refundable.

### **Third Frontier Commission**

(R.C. 184.02, 184.23, 184.24, 184.25, and 184.26)

The bill creates the Ohio Bioproducts Development Program and Ohio Biomedical Development Program. These programs will be funded with money from the Jobs Fund. The bill also establishes the Third Frontier Economic Stimulus Advisory Board to provide advice to the Third Frontier Commission regarding bioproduct and biomedical issues.

### **Ohio Bioproducts Development Program**

(R.C. 184.25)

The bill creates the Ohio Bioproducts Development Program, to be administered by the Third Frontier Commission. Under the Program, the Commission 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, but not limited to, business and 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)

The bill creates the Ohio Biomedical Development Program, to be administered by the Third Frontier Commission. Under the Program, the Commission 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.

### **Jobs Fund**

(R.C. 184.24)

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.

The bill provides that money in the Jobs Fund must be used by the Third Frontier Commission 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 bill (see discussion above under "**Local infrastructure development**").

### **Third Frontier Economic Stimulus Advisory Board**

(R.C. 184.23)

The bill creates the Third Frontier Economic Stimulus Advisory Board to provide general advice to the Third Frontier Commission regarding bioproduct and biomedical issues. The Board is to consist of the following seven members selected for their bioproducts and 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) One member, appointed by the Director of Development.

All members serve at the pleasure of their appointing authorities and a vacancy on the Board must be filled in the same manner as the original appointment. The Governor may remove any member of the 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 Board. The Board must select a chairperson from among its members and a majority of Board members constitutes a quorum. No action may be taken without an affirmative vote of a majority of the Board's members.

Members of the 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. The Board members must file financial disclosure forms in accordance with Ohio Ethics Law (*see* R.C. 102.02). The Department of Development must provide office space and facilities for the Board.

#### **Sunset provisions**

(Sections 22 and 23)

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

The bill provides that the section of law creating the Local Infrastructure Development Fund is repealed effective June 30, 2012.

#### **Effective dates**

(Sections 4 and 24)

Certain provisions of the bill 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, 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. 182.02 and 184.23 to 184.26--Ohio Bioproducts Development Program, Ohio Biomedical Development Program, Third Frontier Economic Stimulus Advisory Board, and permitted uses of the Jobs Fund;

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

(5) Section 5 of the bill appropriating amounts in favor of the Ohio Air Quality Development Authority.

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

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