

Publications

Budget Bill Delivers New Incentive Opportunities

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On June 30, 2021, Governor Mike DeWine signed Amended Substitute House Bill 110 (H.B. 110 or the Budget Bill), which creates the biennial budget for State fiscal years (SFY) 2022-2023 (July 1, 2021-June 30, 2023). H.B. 110 delivers several new initiatives and important changes to economic development in the State of Ohio through the Ohio Department of Development (formerly known as the Ohio Development Services Agency). The General Assembly also amended other important economic development incentives through H.B. 110, which we plan to address in a future client alert.

Megaproject Tax Incentives:

Conference committee added provisions from previously proposed legislation to increase potential incentives for projects with at least \$1B in investment or at least \$75M in Ohio payroll (Megaproject). For a Megaproject operator or qualifying supplier, the maximum limit on Job Creation Tax Credits is extended from 15 years to 30 years under section 122.17. In addition, the qualifying supplier's receipts from sales of tangible personal property to a Megaproject operator may be excluded from the commercial activity tax (CAT). These changes also extend the potential term of enterprise zone exemptions from 15 years to 30 years for an owner of real property constituting the site of a Megaproject or a qualifying supplier. Similarly, H.B. 110 extends the potential term of a community reinvestment area exemption from 15 years to 30 years for commercial or industrial structures on the site of a Megaproject or on a site owned and occupied by a qualified supplier.

Brownfield Remediation Program:

Conference committee added new section 122.6511, creating the brownfield remediation program (BRP) to award grants, of up to 75% of a project's total cost, for the remediation of brownfield sites. The eligibility and administration are up to the Department of Development, which must adopt rules, including determining project and sponsor eligibility and program administration. Development must have the BRP operational and accepting applications within 90 days of

the effective date (by approximately December 27th). For the first year following appropriation of \$350M for the BRP, \$1M is reserved for projects in each of Ohio's 88 counties (leaving \$262M available at-large, to be awarded to qualifying projects on a first-come, first-served basis).

Building Demolition and Site Revitalization Program:

Conference committee added new section 122.6512, creating the building demolition and site revitalization program (BDSRP) to award grants, of up to 75% of a project's total cost, for the demolition of commercial and residential buildings and revitalization of surrounding properties on sites that are not brownfields. The eligibility and administration are up to the Department of Development, which must adopt rules, including determining project and sponsor eligibility and program administration. Development must have the BDSRP operational and accepting applications within 90 days of the effective date (by approximately December 27th). For the first year following appropriation of \$150M for the BRP, \$500k is reserved for projects in each of Ohio's 88 counties (leaving \$106M available at-large, to be awarded to qualifying projects on a first-come, first-served basis).

Venture Capital Gains Income Tax Deduction:

New section 122.851 includes a new income tax deduction, beginning in 2026, for all or a portion of capital gains received by investors in certain Ohio-based venture capital operating companies (VCOCs). The VCOC must manage at least \$50M in active assets and must have Ohio residents as 2/3 of its managing and general partners. The deduction equals 100% of the capital gain received attributable to investments in Ohio businesses and 50% received attributable to a qualified VCOC's other investments.

Meat Processing Investment Program:

The Budget Bill includes \$10M for the Meat Processing Investment Program (MPIP) to award grants of up to \$250,000 to Ohio meat processing plants. Under temp law section 701.90, the meat processing plant must be located in Ohio, in operation as of July 1, 2021, and provide processing services for livestock and poultry producers. The provision sets forth the application criteria, including (1) increasing processing efficiencies, (2) expansion or construction of new facilities; (3) use of funds for food safety or to assist in cooperative interstate shipment; (4) whether the grant will improve harvest services; and (5) project readiness.

Minority Business Microloan Program and the Women-Owned Business Loan Program:

\$20M from the State Small Business Credit Initiative Fund may be used for loans for these two new programs.

Small Business Relief (Federal) Programs:

Bar and Restaurant Assistance (Food and Beverage Establishment) Grant. This \$100M program provides grants up to \$30,000 to restaurants, bars, coffee shops, and other food and drinking businesses affected by the COVID-19 pandemic. The amount of individual grants to eligible businesses will be determined by the

business' loss of revenue in 2020.

Coronavirus Relief - Entertainment Venues Grant. This \$20M program provides grants up to \$30,000 to theaters, music venues, spectator sports venues, museums, and other entertainment establishments affected by the COVID-19 pandemic. The amount of individual grants to eligible businesses will be determined by the business' loss of revenue in 2020.

Lodging Grant. This \$25M program provides grants up to \$30,000 to hotels, motels, and bed and breakfast operations affected by the COVID-19 pandemic. The amount of the individual grants to eligible businesses will be determined by the business' decline in occupancy rate in 2020.

Coronavirus Relief New Business Relief Grant. This \$10M program provides grants of up to \$10,000 to small businesses that were established between Jan. 1, 2020, and Dec. 31, 2020.

Other Programs Funded at New Levels or Extended:

Sports Event Grant Fund: \$10M is appropriated in SFY 2022 for grants described in sections 122.12 and 122.121, with the unexpended balance to be re-appropriated for SFY 2023. These grant awards of up to \$2M support local organizing committees, endorsing municipalities or counties that compete to host a sports event.

Ohio Residential Broadband Expansion Grant Program: Provides \$250M (\$230M in SFY 2022 and \$20M in SFY 2023) for Broadband Development Grant Program described in H.B. 2.

Rural Industrial Park Loan Program: \$15M per fiscal year will be available for Rural Industrial Park Loans, and the restriction on eligible counties has been substantially broadened, adding to the existing rural counties any other Ohio county that is not designated as part of a metropolitan statistical area by the U.S. Office of Budget and Management.

Rural Business Growth Program: \$45M increase in tax credits available and modifies the eligibility and investment criteria for the new credit allocation with revisions to section 122.15-122.156.

Transformational Mixed Use Development: The sunset for certifying new projects is extended from SFY 2023 to SFY 2025.

Additional Statutory Changes:

As noted in the introduction, the Ohio Development Services Agency has returned to its prior name, the Ohio Department of Development. There are substantive statutory changes in H.B. 110 in several programs.

The Job Creation Tax Credit (JCTC), in section 122.17(T), now expressly provides for work-from-home employees even for awards approved prior to the adoption of the work-from-home provision.

The Job Retention Tax Credit, section 122.171, now includes additional criteria for the Ohio Tax Credit Authority to consider in awarding a retention grant, including considering whether the applicant (a) has received a JCTC within the prior five years, (b) is currently receiving a JCTC, (c) has operated at the project

site for at least 10 years, (d) is making a significant upgrade of the project site (rather than routine maintenance) and (e) plans to use machinery, equipment and materials supplied by Ohio businesses in the project when possible.

For the Ohio Opportunity Zone Incentive, section 122.84, the tax credit limit has been increased from \$1M to \$2M in any fiscal biennium.

In the motion picture tax credit program, production contractors (persons other than the production company) were removed from section 122.85 as potential tax credit recipients.

In sum, the Budget Bill delivered a number of new programs, new funding and programmatic changes for the Department of Development this year, and we are looking forward to the roll-out of these new opportunities to assist and support economic development.

Vorys encourages you to contact your Vorys attorney or advisor with questions about these new incentive provisions. Please feel free to contact the following Vorys attorneys: Scott J. Ziance, 614.464.8287, sziance@vorys.com; Christopher J. Knezevic, 614.464.5627, cjknezevic@vorys.com; Sean Byrne, 614.464.8247, spbyrne@vorys.com; or Jonathan K. Stock, 614.464.5647, jkstock@vorys.com.