

DevelopOhio Economic Incentives Toolkit

An Effective Economic Development Toolkit
for Growth and Job Creation

Current as of May 1, 2014



www.DevelopOhio.com

Bricker & Eckler LLP and Argus Growth Consultants, Ltd.
would like to acknowledge and thank Quinten Harris,
currently director of project management for Cincinnati USA
Regional Chamber, for his significant contributions to the
development of this resource.

CONTENTS

<u>Section</u>	<u>Page No.</u>
INTRODUCTION.....	1
The Purpose of This Guide	1
The Changing Economic Development Landscape	1
Bricker & Eckler and Argus Growth Consultants: Commitment to Economic Development.....	2
STATE OF OHIO TAX CREDIT PROGRAMS.....	3
Job Creation Tax Credit Program	3
Home-Based Employee Job Creation Tax Credit Program	4
Non-Refundable Job Retention Tax Credit Program.....	6
Refundable Job Retention Tax Credit Program	7
Historic Preservation Tax Credit Program.....	8
New Markets Tax Credit Program.....	9
Motion Picture Tax Credit Program	10
STATE OF OHIO GRANT PROGRAMS	12
629 (Roadwork Development) Grant Program.....	12
Job Ready Sites Program	12
SiteOhio Certification Program	13
Clean Ohio Revitalization and Assistance Funds	14
STATE OF OHIO LOAN/BOND PROGRAMS	15
166 Direct Loan Program.....	15
Regional 166 Direct Loan Program	16
Minority Direct Loan Program	18
Enterprise Bond Fund Program	19
Industrial Revenue Bond Financing.....	20
Qualified Energy Conservation Bonds	20
Property Assessed Clean Energy Bonds	21
STATE INFRASTRUCTURE BANK PROGRAMS	23
State Infrastructure Bank Loans.....	23
State Infrastructure Bank Bonds	24
JOBSOHIO LOAN AND GRANT PROGRAMS.....	27
JobsOhio Growth Fund Loan.....	27
JobsOhio Workforce Grant	28

JobsOhio Economic Development Grant.....	28
JobsOhio Site Revitalization Loan and Grant Fund	29
MUNICIPAL TAX CREDIT PROGRAMS.....	31
Municipal Job Creation Tax Credit Program.....	31
Municipal Job Retention Tax Credit Program	31
LOCAL PROPERTY TAX ABATEMENT PROGRAMS.....	33
Enterprise Zone Program	33
Community Reinvestment Area Program	34
Tax Increment Financing	36
LOCAL SPECIAL PURPOSE ECONOMIC DEVELOPMENT DISTRICTS/ENTITIES	38
Joint Economic Development Districts	38
Joint Economic Development Zone.....	40
New Community Authorities.....	41
Transportation Improvement District	42
Special Improvement Districts.....	44
Community Improvement Corporations	46
Port Authorities	48
FEDERAL TAX CREDIT PROGRAMS	52
Historic Preservation Tax Credit Program.....	52
New Market Tax Credit Program	53
FEDERAL LOAN PROGRAMS.....	55
7(a) Loan Program	55
504 Loan Program.....	56
FEDERAL GRANT/SPECIAL PURPOSE PROGRAMS.....	58
EB-5 Immigrant Investor Program	58
U.S. Foreign-Trade Zone Program	60

INTRODUCTION

The Purpose of This Guide

Economic development has been defined as “the entire array of activities, some conducted by government, and some by the private sector, often in partnership with government, which are intended to expand the economy of a designated area to increase the number of jobs available to the population of that area.”¹ This guide outlines the array of tools with which Ohio economic development practitioners can stimulate or induce development to occur — or occur sooner than market forces sometimes allow — in their communities. This guide also assists practitioners by identifying programs and clarifying changes to existing programs, and introducing effective new options to consider. If knowledge is power, this guide provides practitioners with the unique ability to empower their communities or businesses to accomplish a variety of economic development objectives.

The Changing Economic Development Landscape

Economic development is changing in Ohio. During one of the most financially challenging times in our country's history, the state of Ohio is adapting and radically redesigning the way it does business with public and private entities, as demonstrated by the restructuring of the Ohio Department of Development (ODOD) into the Ohio Development Services Agency (ODSA)² and the creation of JobsOhio. Bricker & Eckler LLP has been an instrumental part of this process through its longstanding service and relationships with key industry leaders, as well as its collaborative work with state and local government organizations to position Ohio for growth and sustained prosperity.³

¹ Source: www.discoverarkansas.net.

² Gov. John Kasich signed S.B. 314, of the 129th Ohio General Assembly Regular Session 2011-2012, into law on June 26, 2012, which changed the name of the Ohio Department of Development (ODOD) to the Ohio Development Services Agency (ODSA) effective September 26, 2012. ODSA is the successor to ODOD with respect to a number of programs and powers.

³ Visit the DevelopOhio Resource Center at www.bricker.com and www.DevelopOhio.com for various public finance and economic development resources from Bricker & Eckler LLP.

Bricker & Eckler and Argus Growth Consultants: Commitment to Economic Development

Bricker & Eckler provides legal advice to a wide range of clients, including businesses, real estate developers, site selection consultants, governmental agencies and public entities. Enlisting the support of its economic development consulting affiliate Argus Growth Consultants, Ltd.⁴ to serve clients and markets more creatively, Bricker integrates a broad range of capabilities and a network of relationships to position its clients' projects for short- and long-term success. Bricker helps its economic development clients define and implement their overall financing structures, leveraging various financing sources and available incentive programs to maximize the success of their projects. Along the way, Bricker also helps identify and execute strategies to achieve clients' overall business objectives, addressing state taxes, transportation and logistics features, and land-use planning and development.

⁴ See www.ArgusGrowth.com for more information on our consulting affiliate and its service lines.

STATE OF OHIO TAX CREDIT PROGRAMS

Programs Discussed:

- Job Creation Tax Credit Program
 - Home-Based Employee Job Creation Tax Credit Program
 - Non-Refundable Job Retention Tax Credit Program
 - Refundable Job Retention Tax Credit Program
 - Historic Preservation Tax Credit Program
 - New Markets Tax Credit Program
 - Motion Picture Tax Credit Program
-

Job Creation Tax Credit Program

The Ohio Job Creation Tax Credit⁵ (JCTC) is a refundable tax credit provided to companies generally creating at least 10 new jobs with a minimum annual payroll of \$660,000⁶ that pays at least 150 percent of the federal minimum wage during the first three years of project operations.⁷ The JCTC is measured as a percentage of the state income tax withholdings for all new full-time equivalent employees⁸ hired under the program and is applied primarily toward the company's commercial activity tax liability. It also may be applied against the insurance premiums tax or an individual's Ohio personal income tax obligations. Should the amount of the credit exceed the company's commercial activity tax liability for any given year, the difference *is* refunded.⁹

The Ohio Tax Credit Authority is charged with reviewing and approving applications and setting the tax credit rate and term. Companies can receive tax credits under the program of up to 75 percent of withheld state income taxes for a period of up to 15 years.¹⁰ The rate and term are generally based on the number of jobs to be created, the new payroll to

⁵ See O.R.C. section 122.17 and O.A.C. rules 122:7-1-01 through 09. This overview pertains to the JCTC Program for projects approved *after* October 17, 2009.

⁶ A payroll of \$660,000 approximates to 175 percent of the federal minimum wage for 25 net new employees. The payroll threshold for this program will increase as federal minimum wage increases.

⁷ The JCTC Program defines a project site as a single location from which operations are conducted. However under the terms of the statute, manufacturers may designate multiple locations, consisting of one or more integrated buildings or structures within a 15-mile radius, as one project site.

⁸ "Full-time equivalent employees" means the quotient obtained by dividing the total number of hours for which employees were compensated for employment in the project by 2080.

⁹ Source: <http://jobs-ohio.com/funding/>.

¹⁰ Service-oriented projects must demonstrate that at least 51 percent of project site-attributable sales or revenues attributable to the project are generated from buyers located outside Ohio.

be generated by the project, the fixed-asset investment in the project and the extent of the interstate competition for the project.¹¹

A company typically applies for the credit *before* committing to the project as the applicant must demonstrate that the tax credit is a “major factor” in its determination to expand or locate in Ohio. However, recent legislation¹² has slightly changed the operation of the “major factor” requirement by also allowing the requirement to be met based on a recommendation of the chief investment officer of JobsOhio *and* the director of the Development Services Agency. If a taxpayer has already started a project, the major factor requirement *may be* met through such a recommendation made within six months after the JCTC application was received by the Ohio Tax Credit Authority. This is a significant programmatic change that allows for more flexibility for JCTC applicants than what was allowed under prior law, which heavily relied on the monthly Ohio Tax Credit Authority meeting schedule. Finally, the company must commit to maintain operations at the project site for (a) the term of the tax credit plus three years or (b) seven years, whichever is greater.

Home-Based Employee Job Creation Tax Credit Program

The Ohio Home-Based Employee Job Creation Tax Credit¹³ (HBJCTC) is a refundable tax credit provided to companies generally creating at least 10 new jobs with a minimum annual payroll of \$660,000 that pays at least 131 percent of the federal minimum wage.¹⁴ The HBJCTC Program allows companies to apply for the credit on the basis of employees performing services primarily from their Ohio residences exclusively for the benefit of the project. The director of the Development Services Agency may require companies to provide the home-based employees with health care benefits and tuition reimbursement.¹⁵ The HBJCTC legislation also states that the taxpayer may not claim

¹¹ Source: Ohio Development Services Agency, <https://development.ohio.gov/files/bs/JCTCSummary.pdf>.

¹² See O.R.C. section 122.17(C)(2)(a).

¹³ See O.R.C. section 122.17. Governor John Kasich signed Sub H.B. 327, of the 129th Ohio General Assembly Regular Session 2011-2012, into law on June 6, 2012. The law became effective on September 6, 2012.

¹⁴ 131 percent of federal minimum wage is approximately \$9.50 per hour. Federal minimum wage is \$7.25 per hour.

¹⁵ See O.R.C. section 122.17(Q).

the tax credit until the taxable year in which the company employs at least 200 more employees than the number of employees it employed on June 30, 2011.¹⁶

The HBJCTC is measured as a percentage of the state income tax withholdings for all new full-time equivalent employees¹⁷ hired under the program and is applied primarily toward the company's commercial activity tax liability. It also may apply against the insurance premiums tax or an individual's Ohio personal income tax obligations. Should the amount of the credit exceed the company's commercial activity tax liability for any given year, the difference *is* refunded.¹⁸

The HBJCTC Program functions in a very similar manner to the Job Creation Tax Credit Program; however, they are two distinct programs. If a taxpayer employs both home-based employees and employees who are not home-based in a project, the taxpayer must submit separate applications for separate tax credit agreements for the project.¹⁹ The Ohio Tax Credit Authority is charged with reviewing and approving applications and setting the tax credit rate and term. Companies can receive a percentage of withheld state income taxes for a period of up to six years.²⁰ The rate and term are generally based on the number of jobs to be created, the new payroll to be generated by the project, the fixed-asset investment in the project and the extent of the interstate competition for the project.

A company typically applies for the credit *before* committing to the project as the company seeking assistance under the HBJCTC Program must demonstrate that the tax credit is a "major factor" in its determination to expand or locate in Ohio. However, recent legislation²¹ has slightly changed the operation of the "major factor" requirement by also allowing the requirement to be met based on a recommendation of the chief investment officer of JobsOhio *and* the director of ODSA. If a taxpayer has already started a project, the major factor requirement *may be* met through such a recommendation made within six months after the HBJCTC application was received by the Ohio Tax Credit Authority. This is a significant programmatic change that allows for

¹⁶ See O.R.C. section 122.17(D)(9).

¹⁷ "Full-time equivalent employees" means the quotient obtained by dividing the total number of hours for which employees were compensated for employment in the project by 2080.

¹⁸ Source: JobsOhio, <http://jobs-ohio.com/funding/>.

¹⁹ See O.R.C. section 122.17(C)(1).

²⁰ See O.R.C. section 122.17(D)(2)(b); as the HBJCTC has been approved by the legislature for a trial period of six years; therefore, no award can exceed that term.

²¹ See O.R.C. section 122.17(C)(2)(a).

more flexibility for HBJCTC applicants than what was allowed under prior law, which heavily relied on the monthly Ohio Tax Credit Authority meeting schedule. The company must commit to maintain operations at the project site for (a) the term of the tax credit plus three years or (b) seven years, whichever is greater.

The HBJCTC has been approved by the Ohio General Assembly for a six-year trial period. The director of ODSA is required to submit a report at the conclusion of the trial period detailing the effect and number of credits granted, as well as an analysis of the program's success during the aforementioned period. At that time, the General Assembly will make a decision whether to extend or discontinue the program.

Non-Refundable Job Retention Tax Credit Program

The Ohio Non-Refundable Job Retention Tax Credit²² (non-refundable JRTC) is a tax credit provided to companies that commit to retain at least 500 full-time equivalent jobs²³ at their project site²⁴ or maintain an annual payroll of at least \$35 million in Ohio. Companies must also commit to a fixed-asset investment of \$50 million for manufacturing or \$20 million for corporate and professional service²⁵ related companies. The credit granted under the non-refundable JRTC allows participating companies to receive a credit equal to a portion of the state income taxes withheld from all eligible existing full-time employees retained under the program and is applied primarily toward the company's commercial activity tax liability. It also may apply against personal income tax obligations.²⁶ Should the amount of the credit exceed the company's commercial activity tax liability for any given year, the difference is *not* refunded. In the event the amount of the non-refundable JRTC is greater than the taxpayer's state tax liability, any unused portion may be carried forward up to three years.²⁷

²² See O.R.C. section 122.171 and OAC rules 122:16-1-01 through 06. This overview is for the non-refundable JRTC Program for projects approved *after* October 17, 2009.

²³ "Full-time equivalent employees" means the quotient obtained by dividing the total number of hours for which employees were compensated for employment in the project by 2080.

²⁴ The JRTC Program defines a project site as a single location from which operations are conducted. However, under the terms of the statute, manufacturers may designate multiple locations consisting of one or more integrated buildings or structures within a 15-mile radius as one project site.

²⁵ The capital investment must be completed within the three consecutive calendar years preceding the taxable year in which the company first claims the tax credit.

²⁶ The company may not begin receiving job retention tax credit assistance until the minimum investment is completed.

²⁷ Source: Ohio Development Services Agency,
<http://www.cdfa.net/cdfa/cdfaweb.nsf/ordredirect.html?open&id=ohjrtcsun.html>.

The non-refundable JRTC Program is designed for use exclusively by large-scale capital investment projects. In consideration of a company's commitment to significantly invest in the acquisition, construction, renovation or repair of its facilities and/or machinery and equipment, the non-refundable JRTC Program will offer substantial tax savings. In general, the non-refundable JRTC is structured to resemble the Job Creation Tax Credit Program, incorporating a number of similar programmatic requirements and conditions for participation.²⁸

The Ohio Tax Credit Authority is charged with reviewing and approving applications and setting the tax credit rate and term, and may issue tax credits under the program allowing companies to receive a credit up to 75 percent of the state income taxes withheld from eligible full-time equivalent employees for a period of up to 15 years.

A company *must* apply to ODSA and be approved for the credit by the Ohio Tax Credit Authority *before* committing to the project; the recent legislative change providing more flexibility for the Ohio Job Creation and Home-Based Employee Job Creation Tax Credit programs²⁹ did not apply to this program. Lastly, the applicant must commit to maintain operations at the project site for (a) the term of the tax credit plus three years or (b) seven years, whichever is greater.

Refundable Job Retention Tax Credit Program

The Ohio Refundable Job Retention Tax Credit³⁰ (refundable JRTC) is a tax credit provided to companies that commit to 1) retain at least 500 full-time equivalent jobs³¹ at their project site³² and maintain an annual payroll of at least \$20 million *or* 2) maintain an annual payroll of at least \$35 million in Ohio for the entire term of the credit. Companies must also commit to a fixed-asset investment of \$5 million. The credit granted under the refundable JRTC allows participating companies to receive a credit equal to a portion of the state income taxes withheld from all eligible existing full-time employees retained

²⁸ Source: Ohio Development Services Agency, <http://www.cdfa.net/cdfa/cdfaweb.nsf/ordredirect.html?open&id=ohjrctsum.html>.

²⁹ See O.R.C. section 122.17(C)(2)(a).

³⁰ See O.R.C. section 122.171(B)(3). The refundable JRTC in O.R.C. section 122.171(B)(3) should not be confused with the refundable JRTC in O.R.C. section 122.171(B)(2).

³¹ "Full-time equivalent employees" means the quotient obtained by dividing the total number of hours for which employees were compensated for employment in the project by 2080.

³² The JRTC Program defines a project site as a single location from which operations are conducted. However, under the terms of the statute, manufacturers may designate multiple locations consisting of one or more integrated buildings or structures within a 15-mile radius as one project site.

under the program and is applied primarily toward the company's commercial activity tax liability. It also may apply against personal income tax obligations. Should the amount of the credit exceed the company's commercial activity tax liability for any given year, the difference *is* refunded.

The refundable JRTC Program is designed for use exclusively by large-scale capital investment projects. In consideration of a company's commitment to significantly invest in the acquisition, construction, renovation or repair of its facilities and/or machinery and equipment, the refundable JRTC Program will offer substantial tax savings. In general, the refundable JRTC is structured to resemble the Job Creation Tax Credit Program, incorporating a number of similar programmatic requirements and conditions for participation.³³

The Ohio Tax Credit Authority is charged with reviewing and approving applications and setting the tax credit rate and term, and may issue tax credits under the program allowing companies to receive a credit up to 75 percent of the state income taxes withheld from eligible full-time equivalent employees for a period of up to 15 years.

A company *must* apply to ODSA and be approved for the credit by the Ohio Tax Credit Authority *before* committing to the project; the recent legislative change providing more flexibility for the Ohio Job Creation and Home-Based Employee Job Creation Tax Credit programs³⁴ did not apply to this program. Lastly, the applicant must commit to maintain operations at the project site for (a) the term of the tax credit plus three years or (b) seven years, whichever is greater.

Historic Preservation Tax Credit Program

The Ohio Historic Preservation Tax Credit³⁵ (OHPTC) provides a tax credit to owners and long-term lessees of historically significant buildings equal to 25 percent of qualified rehabilitation expenses (QRE) not to exceed the QRE estimates in the application, up to a maximum of \$5 million. QREs are hard construction costs that meet the requirements of the U.S. Secretary of Interior's Standards for Rehabilitation of Historic Properties or

³³ Source: Ohio Development Services Agency,
<http://www.cdfa.net/cdfa/cdfaweb.nsf/ordredirect.html?open&id=ohjrtcsun.html>.

³⁴ See O.R.C. section 122.17(C)(2)(a).

³⁵ See O.R.C. section 149.311 and O.A.C. section 122:19-1-01.

some soft costs such as architect or engineering fees. Funding is provided to applicants³⁶ through competitive rounds based on economic benefit, regional distributive balance and economic impact based on a cost-benefit analysis.

The OHPTC can be applied against the applicant's domestic and foreign insurance premium, financial institutions tax or Ohio individual income taxes. The applicant must also demonstrate that the issuance of an OHPTC is a *major factor* in the applicant's decision to rehabilitate the historic building or to increase the level of investment in the rehabilitation of the historic building.

A building is eligible if it is individually listed on the National Register of Historic Places, located in a registered historic district, certified by Ohio's preservation officer as being of historic significance to the district or listed as a historic landmark by a certified local government. A project may include more than one historic building if the historic buildings are in close proximity, within the same jurisdiction, and if rehabilitation activities and costs are undertaken by the same owner. Each historic building in a multiple building project is subject to the eligibility requirements of a single historic building.

ODSA will accept and review applications on a semiannual schedule (in rounds) each fiscal year.³⁷ All applicants shall notify both ODSA and the Ohio Historic Preservation Office prior to submitting an application and are strongly encouraged to schedule a pre-application meeting with both offices. There is an aggregate limit of \$120 million for the OHPTC credits during each fiscal biennium.

New Markets Tax Credit Program

The Ohio New Markets Tax Credit³⁸ (NMTC) is a nonrefundable tax credit that can assist in the financing of investments in qualified active low-income community businesses in Ohio.

The NMTC Program was designed in 2009 to leverage the Federal New Markets Tax Credit Program to attract investment into the state and spark revitalization in Ohio's low-

³⁶ An eligible applicant is the fee simple owner or qualified lessee of the building described in the application and is a non-governmental entity.

³⁷ First round of fiscal year (July 1 – December 31); Second round of fiscal year (January 1– June 30).

³⁸ See O.R.C. 5725.33, 5725.98, 5729.16, 5729.98, 5733.01, 5733.58 and 5733.98; O.A.C. Chapter 122:22.

income communities. Eligible areas in the state that qualify for the program are low-income communities: 1) that contain census tracts that have a poverty rate of 20 percent or higher; or 2) in which the median income is below 80 percent of the greater of (a) statewide median income or (b) metropolitan median income.

Eligible applicants of the ONMTCs are Community Development Entities (CDEs) that have been allocated Federal New Markets Tax Credits serving Ohio. The NMTCs administered by ODSA are provided to investors (insurance companies or financial institutions) that invest in the funds established by a CDE for projects in Ohio. The tax credits can be applied against the investors' insurance premium or financial institution taxes and are structured to be used over the course of seven years. The total tax credit value will be 39 percent of the investment, with the yearly percentage of tax credits being:

- Zero percent for each of the first two years;
- Seven percent for the third year; and
- Eight percent for the next four years.

The amount of the tax credit claimed may not exceed the amount of the taxpayer's state tax liability for the tax year for which the credit is claimed. Although the credits are nonrefundable, they can be carried forward for up to four years. The maximum state tax credit impact in any fiscal year may not exceed \$10 million. The maximum amount of state tax credits for one project is not permitted to exceed \$1 million.

Motion Picture Tax Credit Program

The Ohio Motion Picture Tax Credit³⁹ is a refundable, nontransferable tax credit taken against the financial institution, income or commercial activity tax for motion pictures produced in Ohio that equals the sum of 25 percent of nonwage and nonresident wage production expenses plus 35 percent of Ohio resident wage production expenditures on eligible productions up to \$5 million per production. Under the legislation, the term "motion picture" is broadly defined as entertainment content created in whole or in part within the state for distribution or exhibition to the general public.

³⁹ See O.R.C. section 122.85, 5733.98, 5747.66 and 5747.98.

Eligible production projects must spend a minimum of \$300,000 in the state of Ohio to qualify and the production activities may include:

- Feature-length films;
- Documentaries (long-form, specials, mini-series, series and interstitial television programming);
- Interactive Web sites;
- Sound recordings;
- Videos and music videos;
- Interactive television;
- Interactive games;
- Videogames;
- Commercials;
- Any format of digital media; and
- Any trailer, pilot, video teaser or demo created primarily to stimulate the sale, marketing, promotion or exploitation of future investment in either a product or a motion picture by any means and media in any digital media format, film or videotape provided the motion picture qualified as a motion picture.

Eligible productions may apply to the director of the ODSA for certification. Upon approval, the production can commence. ODSA will not issue a tax credit certificate before completion of the production.

STATE OF OHIO GRANT PROGRAMS

Programs Discussed:

- 629 (Roadwork Development) Grant Program
 - Job Ready Sites Program
 - SiteOhio Certification Program
 - Clean Ohio Revitalization and Assistance Funds
-

629 (Roadwork Development) Grant Program

The 629 (Roadwork Development) Grant Program (629 Program) was created to support and promote economic development and job creation by providing grant assistance for public roadway improvements, including engineering and design costs, for eligible projects throughout the state of Ohio. 629 Program grants, administered through JobsOhio and the ODSA, typically provide funding up to \$500,000 or 50 percent of the eligible project costs, whichever is less. The project must create new or retain existing jobs in Ohio.

The 629 Program is available for company projects primarily involving manufacturing, research and development, technology, corporate headquarters and distribution activity. Retail projects are ineligible. 629 Program grants are usually provided by ODSA directly to a local jurisdiction and require local participation. All 629 Program grants are contingent upon State of Ohio Controlling Board approval and are provided on a reimbursable basis.

Projects are typically given an 18-month project completion date from the time of State of Ohio Controlling Board approval. Local jurisdictions must report on job creation after the 18-month project completion date has passed. The 629 Program is funded with state gas tax dollars; therefore, the available funding level varies each fiscal year. Funds may be used for costs directly related to public roadwork improvements, including engineering and design costs. Funds are distributed on a first-come, first-served basis.

Job Ready Sites Program

The Ohio Job Ready Sites Program⁴⁰ (JRS Program) was created to bolster the state of Ohio's portfolio of commercial and industrial developable sites, but was last funded in

⁴⁰ See O.R.C. 122.085 through 122.0820, as well as the program rules at O.A.C. 122:20-1-01 through 122:20-1-05.

2012. ODSA continues to work with projects that are not yet complete or certified. Properties in this program were strategically chosen for their ability to provide optimal infrastructure capabilities and attract economy-shifting investment. Grant funding provided by the JRS Program was targeted to offset costs traditionally incurred in speculative commercial and industrial development to accelerate investment decisions and maximize the development potential of each property.⁴¹

Projects that received funding from the JRS Program must satisfy stringent industry standards in order to receive certification. These standards were developed by ODSA and third-party engineering and site selection firms with numerous years of experience in commercial and industrial development. A JRS certification ensures future investors that the property meets site selection standards and includes the necessary attributes demanded by today's leading corporations.⁴²

SiteOhio Certification Program

The SiteOhio Certification⁴³ Program (SiteOhio) is under development and will aim to certify and market “eligible” commercial, industrial and manufacturing sites across the state of Ohio based on site characteristics and community assets. The goal of the program is to assure future investors that the prospective property meets the state's site selection standards and leverages previous investments in infrastructure (i.e., 629 Roadwork Fund, JRS Program, etc.) to better support a project. An “eligible” project is any project that, upon completion, will be a site and/or facility primarily intended for commercial, industrial and manufacturing uses. Eligible projects do not include sites and/or facilities intended primarily for residential, retail or government use. A political subdivision (i.e., city, township, county, school district, port authority, etc.) or individual may apply for certification of a site. However, the applicant must be the property owner or an authorized representative of the owner.

Under the program, an eligible applicant will be able to apply to the director of ODSA for certification of an eligible project, based upon scoring criteria and other rules to be

⁴¹ Source: Ohio Development Services Agency, http://development.ohio.gov/redev/JRS_home.htm.

⁴² For more information on the program and guidelines, visit the JRS webpage on ODSA's website at <http://www.development.ohio.gov/redev/default.htm>.

⁴³ See O.R.C. section 122.9511. The program became effective on 9/4/2012.

developed by the director. This includes rules authorizing fees to cover administrative costs of the program, the authority to contract with other persons to administer all or any part of the program, and the ability to limit the number of sites to be certified, based on available resources and capabilities of ODSA. If the eligible project meets all the scoring criteria and receives the director of ODSA's approval, ODSA will then list the project on its website and will undertake to actively market the site.

Clean Ohio Revitalization and Assistance Funds

The Clean Ohio Revitalization Fund and the Clean Ohio Assistance Fund were established to provide assistance in brownfield revitalization, providing grants to assess environmental concerns and remove environmental obstacles and blight. The programs were modified in 2013 and new projects are no longer being funded. However, ODSA continues to oversee ongoing projects and to provide technical assistance. More information on each program is provided below:

- **Clean Ohio Assistance Fund** – The Clean Ohio Assistance Fund (COAF) was a discretionary grant program serving communities designated as Ohio Priority Investment Areas.⁴⁴ Grants were available for up to \$300,000 for environmental site assessment, and up to \$750,000 for remediation projects.
- **Clean Ohio Revitalization Fund** – The Clean Ohio Revitalization Fund (CORF) was a statewide competitive grant program, governed by the Clean Ohio Council, in which communities competed for grants up to \$3 million to acquire, demolish, cleanup and improve infrastructure on brownfield properties in Ohio.

ODSA, through its Office of Redevelopment, administers both programs⁴⁵ in partnership with the Ohio EPA.⁴⁶ Those seeking funding assistance for new projects should see the JobsOhio Site Revitalization Loan and Grant Fund described later in this publication.

⁴⁴ A map of Ohio's Priority Investment Areas can be found at www.clean.ohio.gov/BrownfieldRevitalization/BrownfieldRevitalizationMaps.htm.

⁴⁵ See website for the published program information and policies at <http://clean.ohio.gov/BrownfieldRevitalization/Default.htm>.

⁴⁶ Source: JobsOhio, <http://jobs-ohio.com/funding/>.

STATE OF OHIO LOAN/BOND PROGRAMS

Programs Discussed:

- 166 Direct Loan Program
 - Regional 166 Direct Loan Program
 - Minority Direct Loan Program
 - Enterprise Bond Fund Program
 - Industrial Revenue Bond Financing
 - Qualified Energy Conservation Bonds
 - Property Assessed Clean Energy Bonds
-

166 Direct Loan Program

The 166 Direct Loan Program⁴⁷ (166 Direct Loan), through ODSA, provides low interest loan financing assistance to businesses for the allowable costs of eligible projects in the state of Ohio. Typically, businesses must commit to create new or preserve existing jobs⁴⁸ in the state as well.

Eligible projects include those related to industry, commerce, distribution or research activities. Allowable project costs and uses under the 166 Direct Loan are land and/or building purchases, machinery and equipment purchases, building construction or renovation costs, long-term leasehold improvements, ongoing business fixed-asset purchases and capitalizable costs directly related to a fixed-asset purchase. ODSA requires a 10 percent minimum equity contribution in the allowable project costs/uses by the company.⁴⁹ Refinancing and retail projects are ineligible under the program.

The 166 Direct Loan may finance up to 50 percent of allowable project costs with loans ranging from \$500,000 to \$1.5 million. The 166 Direct Loans are “take-out” financing, meaning allowable project costs/uses must be capitalized utilizing interim financing from a conventional lender, with the 166 Direct Loan disbursing funds upon project completion. ODSA requires a first or shared-first priority mortgage or lien position on

⁴⁷ See O.R.C. sections 166.06 and 166.07.

⁴⁸ ODSA requires the creation or retention, within a three-year period, of one job for every \$35,000 of 166 Direct Loan proceeds. Priority may be given to eligible projects with higher wage and job creation commitments or projects located in a Priority Investment Area.

⁴⁹ The required contribution may be higher for early stage companies and special purpose facilities.

project costs/uses financed with the 166 Direct Loan proceeds. ODSA may also require additional collateral or credit enhancements⁵⁰ to secure the loan.

The 166 Direct Loan term is based on the useful life of the allowable project costs/uses financed. The term for real estate is up to 15 years, and the term for machinery and equipment is up to 10 years. ODSA does not impose a prepayment penalty. The 166 Direct Loan interest rate is fixed at or below market rates. Companies receiving assistance under the 166 Direct Loan Program are *not* required to complete their project utilizing the Ohio prevailing wage for construction, renovation and machinery installation.⁵¹ Moreover, businesses requesting \$500,000 or less may participate in the Regional 166 Direct Loan Program.

Regional 166 Direct Loan Program

The Regional 166 Direct Loan Program⁵² (Regional 166 Direct Loan) provides low-interest loan financing assistance to businesses creating new or preserving existing jobs⁵³ in the state of Ohio. Twelve local economic development agencies around the state administer the Regional 166 Direct Loan Program on behalf of the ODSA. Eligible projects include those related to industry, commerce, distribution or research activities. Allowable project costs and uses under the Regional 166 Direct Loan are land and/or building purchases, machinery and equipment, building construction or renovation costs, long-term leasehold improvements, ongoing business fixed-asset purchases and capitalizable costs directly related to a fixed-asset purchase. ODSA requires a 10 percent minimum equity contribution in the allowable project costs/uses by the company. Refinancing and retail projects are ineligible under the program.

⁵⁰ Additional collateral or credit enhancements could be: 1) personal guaranties from owners with more than 20 percent ownership in the company; 2) corporate guaranties from related companies; 3) full or partial letter of credit; 4) life insurance on key business owners and/or managers; or 5) other types of credit enhancement, if necessary.

⁵¹ The prevailing wage requirement in section 166.02 was repealed by 129th General Assembly File No. 28, H.B. 153, § 105.01, effective 9/29/2011 for guaranties and loans in O.R.C. sections 166.06 and 166.07 that previously required projects utilizing financial assistance from programs created from these sections to pay laborers and mechanics employed on the project the prevailing rate of wages under Chapter 4115.

⁵² See O.R.C. sections 166.06 and 166.07.

⁵³ ODSA requires the creation or retention, within a three-year period, of one job for each \$50,000 of 166 Direct Loan proceeds. Priority may be given to eligible projects with higher wage and job creation commitments or projects located in a Priority Investment Area.

The Regional 166 Direct Loan may finance up to 40 percent of allowable project costs with loans up to \$500,000. The Regional 166 Direct Loans are “take-out” financing, meaning allowable project costs/uses must be capitalized utilizing interim financing from a conventional lender and its equity, with the Regional 166 Direct Loan disbursing funds upon project completion. ODSA requires a first or shared-first priority mortgage or lien position on project costs/uses financed with the Regional 166 Direct Loan proceeds. ODSA may also require additional collateral or credit enhancements⁵⁴ to secure the loan.

The Regional 166 Direct Loan term is based on the useful life of the allowable project costs/uses financed. The term for real estate is up to 15 years, and the term for machinery and equipment is up to 10 years. ODSA does not impose a prepayment penalty. The initial approval responsibility lies with the regional agency. The loan officer and the agency’s board will approve the loan. Upon approval, the loan package is sent to ODSA’s Oversight Committee⁵⁵ in the Loans & Servicing Office for review prior to submitting to the Ohio Controlling Board. The business cannot begin its project until it receives Ohio Controlling Board approval. Doing so could result in the State’s determination that the business could proceed without State assistance and therefore does not need the funds.

The Regional 166 Direct Loan interest rate is fixed at or below market rates. Companies receiving assistance under the Regional 166 Direct Loan Program are *not* required to complete their project utilizing the Ohio prevailing wage for construction, renovation and machinery installation.⁵⁶ Moreover, businesses requesting more than \$500,000 may participate in the 166 Direct Loan Program.

⁵⁴ Additional collateral or credit enhancements could be: 1) personal guaranties from owners with more than 20 percent ownership in the company; 2) corporate guaranties from related companies; 3) full or partial letter of credit; 4) life insurance on key business owners and/or managers; or 5) other types of credit enhancement, if necessary.

⁵⁵ It is the responsibility of the Oversight Committee to review the loan package for information accuracy, completeness and proper due diligence.

⁵⁶ The prevailing wage requirement in section 166.02 was repealed by 129th General Assembly File No. 28, H.B. 153, § 105.01, effective 9/29/2011 for guarantees and loans in O.R.C. sections 166.06 and 166.07 that previously required projects utilizing financial assistance from programs created from these sections to pay laborers and mechanics employed on the project the prevailing rate of wages under Chapter 4115.

Minority Direct Loan Program

The Minority Direct Loan Program⁵⁷ provides low-interest direct loans to certified minority-owned businesses that are purchasing or improving fixed assets and creating or retaining jobs in Ohio. Eligible borrowers include any operating business entity that has been certified by the state equal opportunity coordinator as a Minority Business Enterprise (MBE) and demonstrates that its fixed-asset expansion/retention project will result in job creation for Ohio citizens.

The ODSA Minority Direct Loan Program may lend funds to businesses engaged in commerce, manufacturing, research and development, or distribution. Funds received under the program may be used for part of the cost of land and/or building purchases, machinery and equipment purchases, new building construction or renovation costs of an existing building. In addition, limited soft costs related directly to the fixed-asset expenditure may be included. Examples of eligible soft costs include architectural and/or engineering costs, installation costs for machinery and financing costs for bank loans. Minority Direct Loan funds may not be used for working capital, refinancing, rolling stock, inventory/receivable financing, speculative real estate development, relocation costs, office equipment, small tools or supplies.

The Minority Direct Loan Program may finance up to 40 percent⁵⁸ of the total fixed-asset costs serving as collateral for the loan with loans ranging from \$45,000 to \$450,000. The Minority Direct Loan Program is “take-out” financing, meaning allowable project costs/uses must be capitalized utilizing interim financing from a conventional lender and its equity, with the Minority Direct Loan Program disbursing funds upon project completion. The interest rate for Minority Direct Loan financing is currently set at 3 percent and is a fixed rate. Companies receiving assistance under the Minority Direct Loan Program are *not* required to complete their project utilizing the Ohio prevailing wage for construction, renovation and machinery installation⁵⁹.

⁵⁷ See O.R.C. sections 166.06 and 166.07.

⁵⁸ The actual level of participation will be determined by DSA based upon the criteria described in the program guidelines under “Criteria for Loan Application Evaluation.”

⁵⁹ The prevailing wage requirement in section 166.02 was repealed by 129th General Assembly File No. 28, H.B. 153, § 105.01, eff. 9/29/2011 for guarantees and loans in O.R.C. sections 166.06 and 166.07 that previously required projects utilizing financial assistance from programs created from these sections to pay laborers and mechanics employed on the project the prevailing rate of wages under Chapter 4115.

Enterprise Bond Fund Program

The Ohio Enterprise Bond Fund⁶⁰ (OEBF), rated AA+ by Standard & Poor's, provides revenue bond financing whereby the Treasurer of the State of Ohio issues bonds, the proceeds of which are loaned to businesses for allowable costs of eligible projects. The OEBF provides long-term, fixed-rate, one-stop project financing for qualifying businesses that create or preserve employment opportunities in the state of Ohio. The OEBF also enables large and small creditworthy businesses access to capital at costs comparable to those of rated multinational corporations.⁶¹ OEBF bonds can be issued on a tax-exempt basis if the project to be financed satisfies the requirements of federal tax law.

Eligible projects include those related to industry, commerce, distribution or research activities. Allowable project costs and uses under the OEBF are land and/or building purchases, machinery and equipment, building construction or renovation costs, long-term leasehold improvements, ongoing business fixed-asset purchases and capitalizable costs directly related to a fixed-asset purchase. ODSA requires a 10 percent minimum equity contribution in the allowable project costs/uses by the company.⁶² Refinancing and retail projects are ineligible under the OEBF.

The OEBF may finance up to 90 percent of allowable project costs with loans ranging from \$2 million to \$10 million. ODSA requires a first or shared-first priority mortgage or lien position on assets financed with the loan proceeds. ODSA may consider a shared position with participating third party lenders. This position is established via a multiparty agreement between the participating lender(s), ODSA and the borrower. ODSA may also require additional collateral or credit enhancements⁶³ to secure the loan.

The OEBF term is based on the useful life of the allowable project costs/uses financed. The term for real estate is up to 15 years,⁶⁴ and the term for machinery and equipment is up to 10 years. The interest rate is fixed for the term of the loan and is determined by the market when the bonds are sold. Companies receiving assistance under the OEBF

⁶⁰ See O.R.C. sections 166.06 and 166.07.

⁶¹ Source: JobsOhio, <http://jobs-ohio.com/funding/>.

⁶² The required contribution may be higher for early stage companies and special purpose facilities.

⁶³ Additional collateral or credit enhancements could be: 1) personal guaranties from owners with more than 20 percent ownership in the company; 2) corporate guaranties from related companies; 3) full or partial letter of credit; 4) life insurance on key business owners and/or managers; or 5) other types of credit enhancement, if necessary.

⁶⁴ In certain cases, loan terms can range 15 to 20 years for real estate.

Program are *not* required to complete their project utilizing the Ohio prevailing wage for construction, renovation and machinery installation.⁶⁵

Industrial Revenue Bond Financing

Industrial Revenue Bonds⁶⁶ (IRBs) are bonds that are issued by a state or local political subdivision that empower these entities with the ability to issue tax-exempt or taxable bonds on behalf of a company. The proceeds from the sale of the IDBs can be loaned to manufacturing, distribution, commercial or research facilities⁶⁷ that utilize the proceeds for various economic development purposes including, but not limited to, the financing of land, the expansion or construction of buildings, and the purchase of machinery and equipment. If properly structured, IRBs can bear interest at tax-exempt interest rates. IRBs can also be used to finance a project in conjunction with other state and federal programs and funds.

Federal law allows bonds to be issued for the above purposes in amounts up to \$10 million. IRBs may be repaid from loan repayments made by the company. Cities or counties may obligate or pledge *only* nontax revenues. Companies receiving IRB financing assistance are *not* required to complete their project utilizing the Ohio prevailing wage for construction, renovation and machinery installation.⁶⁸

Qualified Energy Conservation Bonds

The Qualified Energy Conservation Bond (QECB) Program was started nationwide in 2008 by the Federal Government. In order to qualify as a QECB, a bond must: 1) use 100 percent of the available project proceeds of such issue for one or more “qualified conservation purposes;” 2) be issued by a state or local government; and 3) be designated by the issuer for qualified conservation purposes.⁶⁹ The term “qualified conservation

⁶⁵ The prevailing wage requirement in section 166.02 was repealed by 129th General Assembly File No. 28, H.B. 153, § 105.01, effective 9/29/2011 for guarantees and loans in O.R.C. sections 166.06 and 166.07 that previously required projects utilizing financial assistance from programs created from these sections to pay laborers and mechanics employed on the project the prevailing rate of wages under Chapter 4115.

⁶⁶ See O.R.C. Chapter 165.

⁶⁷ See O.R.C. Chapter 165.01(H).

⁶⁸ The prevailing wage requirement in 165.031 was repealed by 129th General Assembly File No. 28, H.B. 153, § 105.01, effective 9/29/2011.

⁶⁹ Section 301(a) of Title III of Division B, the Energy Improvement and Extension Act of 2008, Pub. L. 110-343, 122 Stat. 1365 (2008) (the 2008 Energy Act), added new § 54D, which contains program provisions specific to Qualified Energy Conservation Bonds effective for obligations issued after 10/3/2008.

purpose” includes, among other purposes, capital expenditures for renewable energy source development, facility and research grants, energy consumption reduction and green community program development. To support the program, Congress authorized \$3.2 billion in QECBs for renewable-energy and energy-efficient projects at the state and local levels. QECBs provide investors with low-interest financing for projects that meet the program’s guidelines.

The most popular form of QECBs provides the issuer of the securities with a federal subsidy payment equal to up to 70 percent of the interest paid by the issuer on bonds issued to finance qualifying QECB projects. In order to distinguish which projects actually qualify, the IRS clarified two of the main criteria under which QECB projects are financed. First, QECBs can be issued for “green community programs,” which are programs that promote both energy efficiency and provide a general public benefit. These programs may include the use of loans, grants or other repayment mechanisms to implement such programs. Second, QECBs can be issued for projects that reduce energy consumption in publicly owned buildings by at least 20 percent.

The variety of financing opportunities with QECBs allow for broad flexibility. Municipalities developing alternative and renewable energy initiatives should explore the implementation of this program.

Property Assessed Clean Energy Bonds

Property Assessed Clean Energy (PACE) Bonds are a relatively new financial tool used by property owners to finance energy efficiency and renewable energy improvements on their properties. The proceeds from the sale of the bonds are loaned to commercial and residential property owners to pay for the project. Property owners in Ohio who take advantage of PACE funding opportunities may use the proceeds for a wide variety of energy-related improvements, including updating existing homes, office buildings and warehouses with energy efficiency technologies for existing facilities (i.e., weather sealing, insulation, energy-efficient boilers and cooling systems, and/or new windows) as well as new energy sources like solar, geothermal, wind, biomass and gasification. Bonds are repaid through an assessment on the owner’s property taxes for up to 20 years. PACE raises property values by making buildings less expensive to heat and cool. This structure also allows for the repayment obligation to transfer automatically to the next property owner if the property is sold.

PACE is also a useful tool for municipalities, school districts, counties and townships as these types of governmental entities can use PACE funding for significant amounts of deferred maintenance or to update or supplement their power sources. A properly structured PACE financing transaction can provide capital to public entities without impacting certain local debt limitations. To utilize the PACE program, private property owners and/or governmental entities must create a special improvement district, which is necessary to implement PACE financing, levy assessments and structure the financing arrangements necessary to fund the improvements. Additionally, PACE financing may be used for related costs like engineering, design, capitalized interest, reserve fund and other professional costs.

STATE INFRASTRUCTURE BANK PROGRAMS

Programs Discussed:

- State Infrastructure Bank Loans
 - State Infrastructure Bank Bonds
-

State Infrastructure Bank Loans

The State Infrastructure Bank (SIB) Loan Program,⁷⁰ offered through the Ohio Department of Transportation (ODOT), provides loan financing assistance for the purpose of fostering the economic development and creation of public transportation facilities that contribute to the multimodal and intermodal transportation capabilities of the state of Ohio. The program provides assistance in the form of loans, loan guarantees, letters of credit, leases, interest rate subsidies, debt service, cash reserves and other financing forms that may be deemed appropriate by the director of ODOT.

Eligible borrowers include any public entity, such as political subdivisions, state agencies, boards, commissions, regional transit boards and port authorities. While publicly dedicated roads and transportation or infrastructure facility projects are eligible, they must retain a local government sponsor to receive loan funding. Thus, the loan must go to a public entity and be guaranteed to be repaid with public funds in order to qualify.

Eligible projects must be public transportation projects, including, but not limited to: construction, reconstruction, resurfacing, restoring, rehabilitation or replacement of public transportation facilities within the state of Ohio; any highway transit or other transportation project eligible for financing or aid under any federal act or program; any project involving maintenance, repair, improvement or construction of a public highway, road, street, parkway or transit project; and any related right-of-way, bridges, tunnels, railroad-highway crossings, drainage structures, signs, guardrails or protective structures.

However, costs for preliminary engineering, design, environmental studies, major investment studies and interchange justification analysis are not eligible project costs under the program.

⁷⁰ The SIB Loan Program is authorized by the 1995 National Highway System Bill. Additionally, SIB is authorized by O.R.C. section 5331.09, which creates the SIB as a fund of the State Treasury to be administered by the director of ODOT.

The SIB Loan Program is characterized as a “revolving loan program,” such that repayments of the loans are to be made to ODOT and then reloaned to subsequent eligible projects. This revolving nature ensures that more transportation projects may be completed through financing assistance from the SIB.

Furthermore, to be approved, projects must be in the right-of-way or construction phase prior to loan approval. Thus, before a loan is approved, it will be considered whether environmental clearance must be provided prior to disbursement of any funds through the loan, whether preliminary engineering must be completed prior to closing the loan, and whether the project has an identifiable funding resource adequate to repay the loan.

The SIB loan term is based on and may not exceed the useful life of the asset financed. Further, the program sets a maximum term of 10 years. Short-term loans are those with terms of three years or less, and their interest rates are made on a case-by-case basis by the loan committee.

The SIB loan interest rate is otherwise fixed at or below market rates by the loan committee and the interest-free period continues for the first 12 months following the loan closing date. The interest accrual period consists of months 13-24 following the loan closing date. If an SIB loan is refinanced with proceeds from an SIB bond issue, a prepayment penalty will be assessed. Additionally, if a loan is prepaid, a penalty will be applied, absent mitigating circumstances.

Borrowers have one year following project completion to withdraw the loan amount (this date is referred to as the loan withdrawal date). After the loan withdrawal date, any amount of the original loan that has not been withdrawn is cancelled and the loan defaults to the total amount withdrawn. Extensions of the withdrawal date may be considered by the board, but may not exceed 12 months.

State Infrastructure Bank Bonds

In addition to loans, the SIB provides funding to support bond issues as well as use of the proceeds of bond issues for loans to qualified borrowers.⁷¹ The purpose of the Transportation Infrastructure Bond Fund Program is to develop projects such as state and federal roadways and multimodal and intermodal transportation capabilities. Loan requests for \$5 million or more may be referred to the SIB Bond Program.

⁷¹ The SIB Bond Program is authorized by the 1995 National Highway System Bill, section 13 of Article VIII of the Ohio Constitution and section 5531.10 of the O.R.C.

Projects qualified for SIB bond financing are the same as those qualified for SIB loan financing, as described in O.R.C. section 5531.09.⁷² Furthermore, under the SIB Bond Program (as under the SIB Loan Program), costs for preliminary engineering, design, environmental studies, major investment studies and interchange justification analysis are not eligible for bond financing. Likewise, qualified borrowers under the bond program are the same as those under the loan program.⁷³ Finally, as with the SIB Loan Program, bond proceeds must be received by a public entity and be guaranteed to be repaid with public funds.

SIB bonds are issued by the Treasurer of the State of Ohio, on behalf of the State. The bonds are not general obligations of the State, nor are they payable from a tax source. Rather, the rights of bond holders under the program to payments of amounts due thereunder are limited solely to revenues pledged to such a payment.

Once a bond is issued through the program, a loan is made to the borrower for the amount of the bond proceeds. The interest rate on the loan will match that on the bonds. The balance of bond proceeds is thereafter held by the trustee in a designated project account and disbursed to the borrower for approved project spending on a reimbursement basis. Following disbursement to the borrower, loan repayments are used to fund the bond debt service payments.

The loan amortization schedule that accompanies the bond documents sets the schedule for loan payments. Prepayment penalties may be assessed on a case-by-case basis if a loan is refinanced with proceeds from an SIB bond issue. Loans may thus be prepaid and bonds redeemed as specified in the loan agreement.

The program follows a bond payment structure that requires semiannual debt service payments to be due to the trustee on April 15 and October 15. Disbursements are then made to the bondholders on May 15 and November 15. However, other payment structures may be approved.

Most bonds issued through the SIB are tax exempt. Therefore, the proceeds must be spent in accordance with the requirements set by USC Title 26, section 148, Internal Revenue Code. This means that the borrower must reasonably expect that: (i) 85 percent of the proceeds will be spent within three years; (ii) 5 percent of the proceeds will be

⁷² See previous section for list of qualified projects for SIB bond financing.

⁷³ See previous section for list of qualified borrowers for SIB bond financing.

obligated to be spent within six months; and (iii) the project will proceed with due diligence to completion. Additionally, in order to avoid rebate to the federal government of any interest earnings in excess of the yield on the bonds, proceeds must be spent in accordance with the following time table: 10 percent within 6 months; 45 percent within 12 months; 75 percent within 18 months; and 100 percent within 24 months of issue. In order to meet the federal spend down requirements, bond proceeds should only be used for the construction phase of a qualified project and should not be used for right of way or design phases, unless those payments can reasonably be expected to meet the spend down requirements.

Additionally, an arbitrage computation is required every five years over the life of the bonds. The borrower on the bonds is responsible for making sure the arbitrage calculations are made.

As under the loan program, the term of the loan may not exceed the useful life of the asset financed by more than 20 percent. The maximum term under the SIB Bond Program is 20 years. Additionally, as under the loan program, projects must be in the right-of-way or construction phase before a loan is approved. Thus, it will be considered whether environmental clearance must be approved prior to disbursement of funds on the loan, whether preliminary engineering must be completed prior to closing of the loan, and whether the project has identifiable funding adequate to repay the loan prior to its issuance.

Principal, interest, legal, administrative, arbitrage or other costs related to transactions, and any costs incurred by ODOT in its performance of the transaction are passed to and borne by the borrower if the borrower requests to prepay or refinance an SIB loan that is associated with an SIB bond. Additionally, ODOT may charge an administrative fee for the bond program.

JOBSONIO LOAN AND GRANT PROGRAMS

Programs Discussed:

- JobsOhio Growth Fund Loan
 - JobsOhio Economic Development Grant
 - JobsOhio Workforce Grant
 - JobsOhio Site Revitalization Loan and Grant Fund
-

JobsOhio is a private, nonprofit corporation established in 2011 to lead Ohio's job-creation efforts by singularly focusing on attracting and retaining jobs, with an emphasis on strategic industry sectors in areas of statewide and regional strength. Those industry sectors include the following: advanced manufacturing, aerospace and aviation, agribusiness and food processing, automotive, biohealth, energy, financial services, information technology, polymers and chemicals, and business functions.

Working with local economic development professionals, JobsOhio has established the JobsOhio Network, which is comprised of six regional entities: Team NEO, the Appalachian Partnership for Economic Growth, Columbus 2020, Cincinnati USA, the Dayton Development Coalition and the Regional Growth Partnership. Those seeking funding assistance from JobsOhio should work with the JobsOhio Network partner in the pertinent state region.

The information below was compiled from the JobsOhio website (<http://jobs-ohio.com/funding/>) and is current as of March 21, 2014.

JobsOhio Growth Fund Loan

The JobsOhio Growth Fund provides capital for expansion projects to companies that have limited access to capital and funding from conventional, private sources of financing. JobsOhio will consider loans to companies that are in the growth, established or expansion stage and that have generated revenues through a proven business plan. The JobsOhio Growth Fund's loan decisions are based on a number of project factors, including, but not limited to, job creation, additional payroll, fixed-asset investment commitment, project return on investment and project location.

The program may finance allowable project costs with loans typically ranging from \$500,000 to \$5 million. For established and expansion stage companies, projects should receive more than half of their total financing from other private capital sources. For

early and growth stage companies, the JobsOhio Growth Fund may consider financing a higher portion of the project's total investment.

The loan term is based upon the useful life of the allowable project costs. The term for real estate is up to 15 years, and the term for machinery and equipment is up to 10 years. The interest rate is a fixed rate at closing. Rates are priced based on project risk and other factors. The program requires at least a 10 percent borrower contribution/equity in the allowable project costs and uses. It typically requires a senior or shared-senior lien position on project uses financed and may require additional collateral or credit enhancements.

The loan is typically "take-out" financing, disbursing upon project completion. The program does not impose a prepayment penalty.

JobsOhio Workforce Grant

The JobsOhio Workforce Grant was created to promote economic development, business expansion and job creation by providing funding for the improvement of worker skills and abilities in the state of Ohio. Grant decisions are based on a number of project factors, including, but not limited to, job creation, additional payroll, fixed-asset investment commitment, project return on investment and project location.

The program requires job creation and training of employees within a specified period of time, typically three years. Ineligible projects include retail and other population-driven businesses. The grant is reimbursed-based, reimbursing up to 50 percent of eligible training costs or up to 75 percent of eligible training costs provided by one of Ohio's public training providers.

Ineligible costs include college degrees, consumables, general equivalency diploma costs, infrastructure, soft skills, trainee wages, travel or preparation time, and profit-oriented courses.

JobsOhio Economic Development Grant

The JobsOhio Economic Development Grant was created to promote economic development, business expansion and job creation by providing funding for eligible projects in the state of Ohio. Grant decisions are based on a number of project factors, including, but not limited to, job creation, additional payroll, fixed-asset investment commitment, project return on investment and project location.

The program requires job creation within a specified period of time, typically three years, and may consider the amount of proceeds per job created. In addition to assistance for the creation of new jobs, the grant may be available to provide assistance for eligible projects that improve operational efficiencies and production expansion, along with the retention of jobs. Ineligible projects include retail and other population-driven businesses. The grant is reimbursed-based with supporting documentation.

Ineligible costs include, but are not limited to, the retirement of bond or other debt instruments issued by grantee to finance completion of the project, administrative costs, rolling stock, long-term housing expenses, interest on borrowed money, travel expenses and taxes from which the grantee is normally exempt.

JobsOhio Site Revitalization Loan and Grant Fund

The JobsOhio Site Revitalization Loan and Grant Fund was created to support the acceleration of redeveloping sites in Ohio. Primary focus is placed on projects where the cost of the redevelopment and remediation is more than the value of the land and a site cannot be competitively developed in the current marketplace. Priority is placed on projects that support near-term job creation opportunities for Ohioans.

Eligible projects typically must retain and/or create at least 20 jobs at a wage rate commensurate with the local market. Priority is given to job creation and retention projects within JobsOhio targeted industry sectors, those making additional capital investment beyond remediation and redevelopment and/or projects with wages higher than the average local wage rate.

Eligible sites are those that are abandoned or are an underutilized contiguous property where redevelopment for the immediate and primary purpose of job creation and retention are challenged by significant redevelopment constraints. Eligible applicants include business, nonprofits or local governments where an end user has signed an agreement such as a letter of intent, option, and lease or holds title to the project site *and* has a specific business plan, financing plan, and schedule for redevelopment and job creation to occur. Eligible costs include demolition, environmental remediation, building renovation, site preparation and infrastructure.

For environmental remediation loans and grants, a “no further action” letter must be achieved within three years of loan or grant agreements, unless an extension of time in writing is granted by JobsOhio in consultation with the Ohio Environmental Protection

Agency (Ohio EPA). A covenant not to sue is required for all projects where an institutional or engineering control is part of no further action/site closure. The Ohio EPA will issue a letter to each awarded remediation project, offering assurances that if environmental remediation is completed according to Ohio EPA and federal standards, a covenant not to sue is achievable for the project.

Site improvement loans are available to finance up to 75 percent of eligible costs up to a maximum of \$5 million. The term of such loans may last up to 15 years. Interest rates are fixed and are determined at closing, and there is an additional .25 percent loan servicing fee. Security is negotiated for each project. Principal and interest repayment is deferred during site revitalization, with repayment beginning upon occupancy or after five years, whichever occurs first. Outstanding loan principal may be reduced annually on a negotiated basis, based on performance.

Site improvement gap grants up to \$1 million are available to be coupled with site improvement loans and are provided to fill funding gaps where remediation costs exceed the anticipated net gain in land and improvement value, making successful redevelopment infeasible. Funds are available only to projects where a confirmed end user will create jobs within a negotiated period, not to exceed five years.

Asbestos and lead paint abatement grants up to \$500,000 are available to projects where an end user has committed to immediate rehabilitation or demolition of structures impacted by asbestos for reuse as industrial, commercial or mixed use, or other economic development initiative. A commitment for reuse can be evidenced by agreements such as options, leases or purchase agreements, along with detailed development and business plans and project financing. Eligible costs are those pertaining to demolition, disposal of universal waste, abatement of asbestos and site preparation. Grant funds are available for lead-based paint abatement only if coupled with asbestos abatement.

MUNICIPAL TAX CREDIT PROGRAMS

Programs Discussed:

- Municipal Job Creation Tax Credit Program
 - Municipal Job Retention Tax Credit Program
-

Municipal Job Creation Tax Credit Program

A Municipal Job Creation Tax Credit⁷⁴ (MJCTC) allows a city or a village (referred to here as a municipal corporation) seeking to increase employment opportunities and encourage the establishment of new jobs in the municipal corporation a tool to improve the economic welfare of the city and its citizens. An MJCTC is a refundable or nonrefundable credit against the local tax levied on the net income of a company that is creating jobs in the municipal corporation. The municipal corporation must pass an ordinance or resolution granting the MJCTC.

An MJCTC is measured as a percentage of the new income tax revenue the municipal corporation derives from new employees of the company for a term not to exceed 15 years. However, before the municipal corporation passes an ordinance or resolution granting an MJCTC, the municipal corporation and the taxpayer must enter into an agreement specifying all the terms and conditions of the credit.

Municipal Job Retention Tax Credit Program

A Municipal Job Retention Tax Credit⁷⁵ (MJRTC) allows a municipal corporation seeking to retain employment opportunities a tool to maintain the economic welfare of the municipal corporation and its citizens. An MJRTC is a nonrefundable credit against the local tax levied on the net income of a company with existing jobs in the municipal corporation. The municipal corporation must pass an ordinance or resolution granting the MJRTC.

⁷⁴ A municipal corporation can grant a job creation tax credit in furtherance of the public purposes enunciated in Article VIII, Section 13 of the Ohio Constitution. Also, O.R.C. section 718.15 allows a municipal corporation to grant a refundable or nonrefundable credit against its tax on income to a taxpayer that also receives a state Job Creation Tax Credit under section 122.17 of O.R.C.

⁷⁵ A municipal corporation can grant a job retention tax credit in furtherance of the public purposes enunciated in Article VIII, Section 13 of the Ohio Constitution. Also, O.R.C. section 718.151 allows a municipal corporation to grant nonrefundable credit against its tax on income to a taxpayer that receives a state nonrefundable Job Retention Tax Credit under section 122.171 of the O.R.C. and may grant a refundable credit against its tax on income to a taxpayer that receives a refundable Job Retention Tax Credit under that section.

An MJRTC is measured as a percentage of the income tax revenue the municipal corporation derives from the retained employees of the company for a term not to exceed 15 years. Before passing an ordinance or resolution granting an MJRTC, the municipal corporation and the taxpayer must enter into an agreement specifying all the terms and conditions of the credit.

LOCAL PROPERTY TAX ABATEMENT PROGRAMS

Programs Discussed:

- Enterprise Zone Program
 - Tax Increment Financing
 - Community Reinvestment Area Program
-

Enterprise Zone Program

The Ohio Enterprise Zone⁷⁶ (EZ) Program is an economic development tool, administered by municipal and county governments, that provides real and/or personal property tax incentives to companies expanding or locating in Ohio. Specifically, EZs are designated areas (zones) of land in which companies can receive tax incentives in the form of a tax abatement on eligible new investments. In order to use the EZ Program, communities petition the ODSA for certification of a geographical zone with a contiguous boundary.

In Ohio, there are two types of EZs that can assist a community in becoming more competitive and attractive to a prospective company: Distress-Based (Full Authority Zones) and Non-Distress-Based (Limited Authority Zones). Any Ohio community may establish a Non-Distress-Based Zone. These zones are not required to document distress. Under this limited zone authority, communities may not consider projects (enter into agreements) involving intrastate relocations unless a waiver is obtained from the director of ODSA. However, a Distress-Based Zone may be created if the local authority petitioning ODSA for certification documents that specific distress levels exist within the designated zone. MSA central cities and Appalachian counties must meet only one of the specified six⁷⁷ distress criteria outlined in the law, while all other locations in the state are required to document two of the distress criteria.

⁷⁶ See O.R.C. sections 5709.61-.69.

⁷⁷ The six distress criteria qualifying a distress-based zone are: 1) 125 percent of the state average unemployment during the most recent 12 months; 2) at least 10 percent population loss between 1980 and 2000; 3) prevalence (minimum of five percent) of vacant or demolished commercial or industrial facilities; 4) 51 percent of the population is below 80 percent of the area's median income; 5) specific vacant industrial facilities (zone applies to only those facilities); and 6) income weighted tax capacity of the school district is below 70 percent of the state average.

Once an EZ (Distress-Based or Non-Distress-Based) is certified, local officials may negotiate agreements with prospective nonretail⁷⁸ businesses to invest in the zone. The communities may award an exemption up to 75 percent in incorporated areas (or an average of 60 percent over the term) and up to 60 percent in unincorporated areas on real property for up to 10 years. With the approval of the local school board, the exemption may be up to 100 percent and for a term of up to 15 years. These EZ abatements can provide substantial tax reductions on new real property investments as the abatements apply to the increase in assessed value of the real property.

The EZ agreement is a contract between the community and the company. Businesses must commit to an agreement to retain or create employment, and to establish, expand, renovate or occupy a facility in the EZ. The rate and term of the tax abatement are negotiated between local officials and the company.⁷⁹ The contract must be executed prior to *any* portion of the project beginning. Lastly, legislation must then be passed by the appropriate local legislative authorities to provide final approval of the agreement.⁸⁰

Community Reinvestment Area Program

The information below was compiled from the ODSA website (www.development.ohio.gov/files/bs/CRA_Summary.doc) and is current as of March 21, 2014.

The Ohio Community Reinvestment Area (CRA) Program⁸¹ is a property tax abatement program benefiting property owners who renovate existing or construct new buildings. This program permits cities, villages or counties to petition to ODSA for confirmation to designate an area where investment has been discouraged as a CRA to encourage revitalization of the existing housing stock and the development of new structures.

Once an area is confirmed for designation, the communities must establish a local legislative authority, which has jurisdiction over the designated area and determines the size, the number of reinvestment areas, and the term and extent of the real property tax abatements to taxpayers that invest in the designated area. The local legislative authority

⁷⁸ Retail operations are not eligible for tax exemptions except in those urban areas which have been designated as impacted cities.

⁷⁹ See O.R.C. section 5709.631; Ohio law requires specific references and commitments to be made within the EZ agreement.

⁸⁰ The EZ program was extended through 10/15/2014 by Amended SB 112, which is effective 10/11/2013.

⁸¹ See O.R.C. sections 3735.65-70.

must designate a housing officer to review applications and to serve as the program administrator. In addition, the local legislative authority must create a tax incentive review council to review performance of all agreements and projects annually.

The CRA Program was created in 1977, but underwent major revisions in 1994. As a result of those revisions, there are now two types of CRAs in Ohio — those created prior to July 1, 1994, and those created after.⁸² The regulations governing each type vary considerably.⁸³ In each case, however, the local legislative authority with jurisdiction over the designated area determines the size, the number of reinvestment areas, and the term and extent of the real property abatements.

Local municipalities or counties can determine the type of development to be supported by the CRA Program by specifying the eligibility of residential, commercial and/or industrial projects. All property owners meeting the requirements set forth in the local legislation and planning to undertake a real property improvement can apply to the housing officer designated by the local legislative authority. In a pre-July 1, 1994, CRA, the application is made *after* the improvements have been completed *unless* otherwise stipulated within the CRA enabling legislation. In a post-July 1, 1994, CRA, residential applications are filed *at* construction completion, but projects involving commercial or industrial facilities must apply *before* the project begins. The term of the exemption for a pre-July 1, 1994, CRA is as stipulated within the local legislation. Residential projects in a CRA created after July 1, 1994, receive the percentage and term of the exemption specified within the authorizing legislation. In all commercial and industrial projects in a CRA created after July 1, 1994, the abatement percentage and term are to be negotiated between the property owner and the local legislative authority. It is also important to note that a CRA created after July 1, 1994, must receive confirmation from the director of ODSA prior to formally granting a real property tax incentive. Also, school district approval is generally required for an abatement greater than 50 percent in a CRA created after July, 1, 1994; no such approval is required in a CRA created before that date.

While the CRA Program is primarily a housing-oriented incentive, it does have considerable value as an economic development tool. The CRA Program is a permanent tax exemption incentive program, which does not have a sunset provision. Local

⁸² Any CRA created prior to July 1, 1994, is grandfathered and many of the post-July 1, 1994, CRA provisions do not apply.

⁸³ It is extremely important for both property owners and local governments to realize the significance of the local authorization date.

legislative authorities may wish to include an annual review or renewal clause to ensure the program is meeting expectations.

Tax Increment Financing

Tax Increment Financing⁸⁴ (TIF) is an infrastructure financing tool authorized by several different sections of the Ohio Revised Code. It is usually viewed as an economic development tool because it provides a mechanism for funding public infrastructure improvements that “directly benefit” a commercial development.

A TIF is somewhat similar to the Enterprise Zone and Community Reinvestment Area programs because it provides an exemption from property taxes of the *increased* property value from a commercial development project. What makes a TIF different is that the property owner is required to make “service payments in lieu of taxes” (commonly referred to as PILOTs) in an amount equal to the exempted real property taxes. Those PILOTs are used to pay for the costs of the public infrastructure improvements (or to pay debt service charges on bonds or notes issued to finance the infrastructure improvements).

The law defines the types of public infrastructure improvements that may be financed including, but not limited to, public roads and highways; water and sewer lines; environmental remediation; land acquisition, including acquisition in aid of industry, commerce, distribution or research; demolition; storm water and flood remediation projects; the provision of gas and electric, and communication service facilities; and the enhancement of public waterways through improvements that allow for greater public access. A TIF of residential property is permitted *but* only in limited circumstances.

A TIF is implemented by legislation passed by the appropriate local legislative authorities that declares the increased real property values resulting from a development to be exempt from real property taxation. However, the property taxes of the existing land value, before the TIF,⁸⁵ continue to be collected and distributed to the taxing entities just as before. The maximum term of a TIF exemption is 30 years, and the maximum

⁸⁴ Tax Increment Financing (TIF) is an economic development tool available to municipal corporations (R.C. 5709.40-5709.43), townships (R.C. 5709.73-5709.75) and counties (R.C. 5709.78-5709.81). Although some minor variations exist, they generally operate in the same manner.

⁸⁵ The existing land value, before the TIF, is commonly referred to as the base value from which the tax increment is calculated.

percentage exemption is 100 percent; however, *without* the consent of the affected school district(s), the exemption cannot exceed 10 years or be greater than 75 percent.

The reason a TIF is advantageous for a company or developer is that the increased property taxes that would otherwise be distributed to the county, township, school and any special taxing districts are instead used to pay the cost of infrastructure improvements needed to lure a prospective company or maintain the quality of the community's public infrastructure. The TIF exemption commences with the tax year in which an improvement first appears on the tax duplicate that begins *after* the effective date of the TIF ordinance.

LOCAL SPECIAL PURPOSE ECONOMIC DEVELOPMENT DISTRICTS/ENTITIES

Programs Discussed:

- Joint Economic Development Districts
 - Joint Economic Development Zones
 - New Community Authorities
 - Transportation Improvement Districts
 - Special Improvement Districts
 - Community Improvement Corporations
 - Port Authorities
-

Joint Economic Development Districts

Joint Economic Development Districts⁸⁶ (JEDDs) are special-purpose districts that are created by a contract between a combination of municipal corporations and townships. JEDDs allow for the levying of a district-wide income tax and the provision of municipal services in unincorporated areas. Under Ohio law, one or more municipal corporations and one or more townships may enter into a contract to create a JEDD for the purpose of facilitating economic development. Except in limited circumstances, each contracting party must be contiguous to at least one other contracting party. In addition, the territory included in the JEDD must meet several additional requirements to qualify.⁸⁷ Once the JEDD has been created, any county within which the JEDD is located may enter into an agreement with the contracting parties regarding the provision of services within the JEDD.

To create a JEDD, there must first be a public inspection of the contract and the economic development plan for the JEDD, which consists of a schedule of the new, expanded or additional services, facilities or improvements to be provided, and a schedule for the collection of any income tax to be levied within the JEDD. There must

⁸⁶ Several different sections of the Ohio Revised Code authorize the creation of Joint Economic Development Zones and Joint Economic Development Districts. The focus of this overview is a JEDD authorized by O.R.C. 715.72 through O.R.C. 715.81, and *not* joint economic development zones created under O.R.C. 715.69 or joint economic development districts created under O.R.C. 715.70 and O.R.C. 715.71.

⁸⁷ To qualify, the territory included in the JEDD must meet these additional requirements: a) the JEDD must be located within the territory of one or more of the contracting parties and may consist of *all* of that territory; b) the territory may not include existing residential areas or areas zoned for residential use; and c) the area may not include any land owned by or leased to a municipal corporation or township, unless such municipal corporation or township is a contracting party or has consented to the inclusion of that land within the JEDD.

also be a description of the area to be included within the JEDD, including a map. Next, a public hearing must be held to promote public discussion of the contract and the JEDD. Each contracting party must then adopt legislation approving the contract. Finally, the contract must be executed.

Once the contract is in place, the parties must file documents⁸⁸ with the board of county commissioners of each county within which the JEDD is to be located. Next, the board of county commissioners of each county within which the JEDD is to be located must pass a resolution approving or disapproving the creation of the JEDD. If the board of county commissioners approves the JEDD, a vote of the electors of each township proposing to be a contracting party on the creation of the JEDD must be held.

A JEDD is governed by a board of directors. The contract sets the method for appointing board members. The powers of JEDDs are not clearly defined by Ohio law, but include:

- The power to levy an income tax within the JEDD at a rate not higher than the highest rate being levied by a municipality that is a contracting party, with an amount being set aside for the long-term maintenance of the JEDD.
- The power to determine the substance and administration of zoning and other land-use regulations, building codes, permanent public improvements and other regulatory and proprietary matters determined to be for a public purpose.
- The power to limit and control annexation of unincorporated territory within the JEDD.
- The power to limit the granting of property tax abatements and other tax incentives within the JEDD.

In addition, JEDDs have all other powers that are described in the contract. But, since a JEDD is a creature of statute, it can have only such powers as are specifically granted by statute. Thus, except for the powers described above, a JEDD can have no more power

⁸⁸ Once the JEDD contract is in place, the parties must file the following documents: 1) a signed copy of the contract; 2) the description of the area, including the map; 3) the plan; 4) certified copies of the parties' legislation approving the contract and the JEDD; 5) a certificate of each contracting party that a public hearing was held to get community input on the JEDD; 6) a petition signed by a majority of the property owners located within the proposed JEDD; and 7) a petition signed by a majority of the business owners located within the proposed JEDD.

than an individual municipality or township would have. Ohio law specifically provides that the powers granted to a JEDD “are in addition to and not in derogation of all other powers granted to municipal corporations and townships pursuant to law.” Thus, creating a JEDD cannot cause a contracting party to lose other powers.

Joint Economic Development Zone

Joint Economic Development Zones⁸⁹ (JED-Zones) are special purpose districts that are created by a contract between municipal corporations. JED-Zones allow for the levying of a zone-wide income tax on individuals working within the JED-Zone and on businesses located there for the purpose of facilitating new or expanded growth for commercial or other economic development efforts. Unlike the laws governing JEDDs, Ohio laws governing JED-Zones do not require each contracting party to be contiguous to at least one other contracting party.

Prior to the approval of the agreement, all parties must hold public hearings at which comments may be taken. At the hearings, the proposed agreement, map and an economic development plan for the area or JED-Zone must be available for public inspection. Once all parties pass an ordinance or resolution approving the agreement, it goes on the ballot for all jurisdictions to be approved by the electors living in the JED-Zone. If approved, the JED-Zone is created. If there are no electors living in the JED-Zone, then it is simply imposed.

The tax revenue generated in the JED-Zone must be used for the economic development purposes outlined in the proposed agreement. The agreement will provide for the manner in which the contracting municipal corporations will distribute any municipal income tax revenues generated in the JED-Zone. The contract may be amended, renewed or terminated with the consent of the contracting parties at any time. Ohio law does not provide a notice requirement to a school district, nor does a school district have any right of approval over the creation of the JED-Zone or the imposition of the income tax.

⁸⁹ Several different sections of the Ohio Revised Code authorize the creation of Joint Economic Development Zones and Joint Economic Development Districts. The focus of this overview is a Joint Economic Development Zone created under O.R.C. 715.69.

New Community Authorities

A New Community Authority (NCA), also known as a Community Development Authority,⁹⁰ is a tool to support the development and growth of structured, economically stable and diverse communities. NCAs are public/private partnerships that allow local governments and private developers to work together to achieve development or redevelopment goals. An NCA can also be established to support an addition to an existing community, which includes industrial, commercial, residential, cultural, educational and/or recreational activity facilities. The NCA is designed to align with planning concepts for utility, open space and other supportive facilities. An NCA is a separate public body that is governed by a board of trustees. That board may oversee, coordinate, construct and finance public infrastructure improvements and community facilities for the benefit of the community.

The first step necessary to form an NCA is a petition signed by all of the owners of the real property that will be included within the NCA's boundaries. If the NCA boundaries are not entirely within a municipality, the NCA must include at least 1,000 acres. There are no minimum acreage requirements for an NCA that is located entirely within a municipality. The petition must be approved by the NCA's organizational board of commissioners, which typically is comprised of the board of county commissioners for each county where the NCA is located. The petition must also have approval from the largest city of the county in which the NCA is located. In some circumstances, approval is also required from the largest city of a neighboring county, even if no part of the proposed NCA is located within that city. If more than half of the proposed NCA is located within the most populated city of a county, the city council, as opposed to the board of county commissioners, would become the "organizational board of commissioners" and would be charged with approving the petition.

NCAs are governed by a board of trustees initially appointed by the organizational board of commissioners and the developer. The board has seven to 13 members as established in the petition.

The NCA petition launches the NCA's community development program, which may consist of land development activities (e.g., sanitary and storm sewers, road construction,

⁹⁰ O.R.C. Chapter 349 provides the authority and procedures for forming and governing a New Community Authority.

water systems, sidewalks and other public improvements) and community facilities (such as educational, cultural and recreational facilities, public buildings and parks). If necessary, community development programs may be adjusted by amending the petition *or*, if permitted by the petition, by resolution of the NCA board of directors.

NCAs have extensive statutory powers to put their community development programs into action. This includes the ability to acquire and dispose of property; enter into agreements with governments, developers or other parties (subject to prevailing wages but without competitive bidding) for land development actions; construct community facilities (e.g., community and recreation centers, parks, auditoriums, schools, day care centers, hospitals and utilities); levy community development charges; issue necessary bonds; and conduct hiring of staff. NCAs and governmental entities or agencies can also collaborate to carry out the community development program. There are no zoning or subdivision regulation powers for NCAs and they do not have the power to provide fire or police protection. NCAs may supply water or sewage treatment and disposal services, but only in instances where the services cannot be obtained from existing political subdivisions.

A “community development charge” can be levied by an NCA to pay for its community development program if permitted by the NCA's petition and restrictions placed on the real property within its boundaries. These community development charges can be established based on the assessed valuation of real property, the income of NCA residents, the profits of businesses operating in the NCA area, a uniform fee per parcel or any combination of these. Community development charges can be collected by the NCA or certified to the county auditor to be collected along with real property taxes. NCAs may also issue bonds to fund community development programs with the bonds paid for and secured by community development charges or other income sources (e.g., rents, user fees, sale proceeds, grants, gifts, etc.). All bonds issued by the NCA become a debt of the NCA rather than of any political subdivision.

Transportation Improvement District

Transportation Improvement Districts⁹¹ (TIDs) are multijurisdictional, hybrid organizations that combine the powers of government entities with the flexibility of private corporations. The process of creating a TID is as simple as the board of county

⁹¹ See O.R.C. Chapter 5540.

commissioners passing a resolution, which must establish a board of trustees to govern the TID. The TID board, in turn, may hire an executive director as well as other employees and independent contractors to implement TID projects.

Once established, TIDs have wide latitude to enhance transportation infrastructure. If necessary, TIDs may purchase, lease or appropriate land. They may drive and oversee every aspect of improvements, including construction, repair and maintenance of new and existing transportation infrastructure. In some cases, TIDs may even construct or improve streets connecting to the interstate highway system without first obtaining approval from political subdivisions where the work will take place.

To fund these projects, TIDs may draw financial support from varied sources. TIDs have authority to issue revenue bonds with a maturity of up to 30 years. They may establish and collect tolls or user charges. In addition, TIDs may accept grants from federal, state and local government subdivisions, transit authorities and commissions, and port authorities. Private entities seeking to support TIDs may contribute to their coffers. TIDs also may derive revenue from the purchase and sale of land, even if a TID purchases land for investment purposes rather than because it is necessary for a TID project.

TIDs may levy special assessments of up to 10 percent of the assessable value of a lot or parcel of land that a proposed improvement will benefit. These assessments may last as many years as necessary to satisfy any note, bond, instrument or obligation issued to pay for the improvement. Before assessing property, however, TIDs must notify affected landowners and hold a hearing regarding the assessment. Owners of affected land who improve their property subject to an agreement with a TID may receive credit against the assessments for such improvements. In addition, TIDs must obtain consent of a political subdivision before assessing property in the political subdivision that falls outside the TID.

Special Improvement Districts

Special Improvement Districts for Public Infrastructure or Public Services

A Special Improvement District⁹² (SID) can be used as an economic development tool for redevelopment and may be created within the boundaries of any one municipal corporation, any one township, or any combination of contiguous municipal corporations and townships by a petition of property owners within the proposed district for the purpose of developing and implementing plans for public improvements and public services that benefit the district.

The articles of incorporation of the SID must be submitted to the mayor and city council accompanied by the petition to create the SID, which must be signed by owners of at least 60 percent of the front footage of all real property located in the proposed district that abuts upon any street, alley, public road, place, boulevard, parkway, park entrance, easement or other existing public improvement within the proposed district, *or* by the owners of at least 75 percent of the area of all real property located within the proposed district. The city has 60 days to approve or disapprove, by resolution, the petition, including the articles of incorporation. The city may impose reasonable conditions in a resolution of approval. A SID excludes church property or property owned by the state, county, township, municipal or federal government, unless a church, county, township or municipal corporation has specifically requested in writing that the property be included in the district. The “petitioners” may propose an initial plan for public services or public improvements that benefit all or any part of the district. Any initial plan shall be submitted as part of the petition proposing creation of the district.

A SID is governed by the board of trustees of a nonprofit corporation created specifically for the SID. The board must consist of at least five directors and must include a person appointed by the legislative body of the political subdivision and the executive of the political subdivision. The other members of the board must be members of the district, and such other members must be elected at a meeting of the entire membership of the district.

After the initial plan is approved by all municipal corporations and townships to which it is submitted for approval and the SID is created, each participating subdivision shall levy

⁹² See O.R.C. Chapter 1710.

a special assessment within its boundaries to pay for the costs of the initial plan. The levy shall be for no more than 10 years from the date of the approval of the initial plan. For purposes of levying an assessment for this initial plan, the services or improvements included in the initial plan shall be deemed a special benefit to property owners within the SID.

Energy Special Improvement Districts

An Energy SID is a special type of SID that can be used by private property owners to establish plans for the development of alternative energy and energy efficiency improvements.⁹³ The specific list of improvements eligible for Energy SID programs includes solar photovoltaic, solar thermal, geothermal, wind, biomass, gasification and energy efficiency technologies. Like a traditional SID, an Energy SID has a board of directors that functions to implement a plan requested by property owners, and property owners can adopt plans whereby they request special assessments to fund plan improvements.

However, there are a number of differences between Energy SIDs and traditional SIDs. First, Energy SIDs are created for the specific purpose of financing discrete *energy-related improvements on private property*, whereas traditional SIDs are established to support plans for *public improvements* and *public services*. Second, Energy SIDs can be formed as districts including noncontiguous property, whereas traditional SIDs require district contiguity. Third, Energy SID plans are adopted and special assessments are requested by 100 percent of property owners within the district, whereas traditional SID plans can be adopted and special assessments can be assessed by as few as 60 percent of the front footage of the property owners located within the district.

A special method of financing called Property Assessed Clean Energy (PACE) financing can be used to establish funding for energy-related improvements, with the funding secured by special assessments levied against the real property in an Energy SID. PACE financing can be used for a variety of projects. First, PACE makes economic sense for any project involving a significant amount of deferred maintenance. The energy savings generated by new improvements to existing office buildings, retail buildings, warehouses, manufacturing facilities and single-purpose sites can be significant and can support rapid repayment of the upfront capital investment in the improvements. Second, PACE is well-

⁹³ See O.R.C. Chapter 1710.

suited for large, consistent users of power. Large users of power often find significant energy savings through energy efficiency upgrades or retrofits, and they often need or desire supplemental energy from alternative energy improvements like solar panels, geothermal systems and wind turbines. Third, PACE can be a creative way to finance publicly owned alternative energy or energy efficiency improvements. A properly structured PACE program involving an Ohio municipality, county, school district or township can provide upfront capital for energy improvements to public buildings without impacting local debt limitations. In short, Energy SIDs can utilize PACE financing to provide capital for a variety of energy-related projects within the Energy SID district.

Community Improvement Corporations

Many communities utilize nonprofit corporations to facilitate activities that a city or village could not directly accomplish. Often, these special corporations come in the form of chambers of commerce or business groups like community development corporations. However, Ohio law also provides for the creation of a Community Improvement Corporation⁹⁴ (CIC) as a more formal organization that can encourage and facilitate economic development for municipalities, counties or townships (referred to here as political subdivisions). At its essence, a CIC is an Ohio nonprofit corporation created in the same manner as a charitable, arts or other corporation. In fact, all of the laws that apply to nonprofit corporations generally also apply to CICs.

As a corporation separate from a municipality, a CIC may assume certain community-building activities that would be difficult, either legally or politically, for the municipality itself to directly undertake. What makes a CIC unique from a basic nonprofit corporation is the ability of a political subdivision to designate a CIC as its “agency” for the industrial, commercial, distribution and research development in the political subdivision. This designation (in addition to certain agreements between the political subdivision and the CIC, as discussed in more detail below) enables a CIC to exercise certain “superpowers” on behalf of the political subdivision for economic development — powers that the political subdivision would not be able to directly exercise without jumping through cumbersome and potentially problematic procedural hoops.

⁹⁴ O.R.C. Chapter 1724 permits a municipality, county or township to create a nonprofit corporation called a community improvement corporation.

This designation is accomplished by legislation of the governing body of the political subdivision determining that the policy of the political subdivision is to promote the health, safety, morals and general welfare of its inhabitants through the designation of a CIC. Through such designation and through an agreement between the CIC and the political subdivision, a CIC can have a positive impact on economic development within the community. The agreement between the CIC and the political subdivision may allow the CIC to undertake one or more of the following activities⁹⁵ for the benefit of the political subdivision and the community:

1. Development of an economic development plan for the political subdivision, which must be approved by the governing body of the political subdivision;
2. Sale or lease of lands for uses determined by the governing body that will promote the welfare of the people of the political subdivision, stabilize the economy, provide employment and assist in the development of industrial, commercial, distribution and research activities to the benefit of the people of the political subdivision and will provide additional opportunities for their gainful employment; and
3. Conveyance of lands of the political subdivision to the CIC without competitive bidding.

Once created, a CIC can help facilitate economic development for the political subdivision primarily in the area of property acquisition, development and disposal. For instance, a political subdivision may acquire real and personal property in connection with industrial and economic development and sell or lease such property to the CIC without competitive bidding. The CIC may have the power to sell such property to a third party without competitive bidding. One restriction on the CIC in this regard is that if the CIC sells such property for an amount greater than the amount it paid the political subdivision for such property, the CIC must pay the difference to the political subdivision.

This allows communities greater flexibility when it comes to marketing and project generation. CICs allow staff some cover in dealing with business that is not always possible when reporting directly to elected officials. Additionally, the ability of CICs to

⁹⁵ See O.R.C. sections 1724.10(B)(1) and (2).

own land and buildings and to issue industrial revenue bonds gives communities more tools to attract and retain business.

As discussed above, certain exceptions to Ohio's public records laws apply to CICs. One such exception applies to any financial and proprietary information, including trade secrets, submitted by or on behalf of an entity to the CIC in connection with the relocation, location, expansion, improvement or preservation of the business of that entity held or kept by the CIC, or by any political subdivision for which the CIC is acting as agent. Such information is confidential information and is not a public record. Any other information submitted by or on behalf of an entity to the CIC in this context is confidential information and is not a public record until the entity commits in writing to proceed with the relocation, location, expansion, improvement or preservation of its business.

When the board of trustees of a CIC or any committee or subcommittee of board meets to consider information that is not a public record, the board, committee or subcommittee, by unanimous vote of all members present, may close the meeting during consideration of the confidential information. The board, committee or subcommittee is not permitted to consider any other information during the closed session. Any meeting at which a decision or determination of the board is made in connection with the relocation, location, expansion, improvement or preservation of the business of the entity must be open to the public.⁹⁶

Besides the benefits of diverse development, CICs can also serve as a forum for governmental and community leaders to discuss the community's development opportunities and plans. If structured properly, a CIC can serve a critical role in helping a municipality to accomplish its economic goals and objectives and to coordinate its development activities.

Port Authorities

Many municipalities and counties around the state of Ohio have created port authorities,⁹⁷ and a few of them even operate seaports and airports. However, the majority of the state's port authorities were created as economic development tools to stimulate job

⁹⁶ Ohio Attorney General Opinion No. 87-024.

⁹⁷ O.R.C. Chapter 4582 regulates port authorities.

growth and economic development in their communities. As a result, the concept of a port authority is often confusing due to the multitude of powers they possess. However, at its essence, a port authority is a political subdivision with its jurisdiction including all the territory of the political subdivision(s) that created the port authority.

Port authorities are governed by a board of directors, and the political subdivisions (city, township or county) creating the port authority may determine the number of members on the board. The selected members are appointed by the leadership of the political subdivision with the advice and consent of that political subdivision's legislative authority.⁹⁸ Except under very limited circumstances (typically by special legislation to authorize overlapping port authorities), a political subdivision may be a part of only one port authority, and the port authority has jurisdiction only within its boundaries. However, through the use of cooperative agreements with cities, counties or other port authorities, a port authority can undertake economic development projects outside of its boundaries.

Port authorities' broad powers make them very powerful economic development tools. Examples of a port authority's powers include, but are not limited to:

- Acquiring property
- Issuing revenue bonds
- Facilitating economic development transactions
- Exercising eminent domain power
- Acquiring property to facilitate economic development and housing
- Receiving state and federal grants and loans
- Exercising powers on behalf of another subdivision
- Issuing general obligation bonds (under very limited circumstances)
- Levying voted property tax
- Engaging in extraterritorial activities

Port authorities have several additional structural advantages (or benefits) to promote economic development. Those include the ability to create and operate a Bond Fund

⁹⁸ See O.R.C. Chapter 4582.03 for organization of board of directors.

program, limited exceptions to the Sunshine and Public Records laws, exemptions from Prevailing Wage Requirements, as well as federal and state tax exemptions:

Bond Fund

Port authorities can issue taxable or tax-exempt bonds and have created so-called common bond funds, which are pooled security bond issuance programs. Through these bond funds, port authorities can finance a variety of economic development projects. However, in order to create and maintain a new bond fund, a port authority will need: (1) a source of capital or security for the additional reserves needed to make the bond fund creditworthy, and (2) professional administrative capabilities.

Exception to Sunshine Law and Public Records Law

Financial and proprietary information, including trade secrets, submitted to a port authority in connection with the relocation, location, expansion, improvement or preservation of the business of that employer is not a public record and is therefore kept confidential. Thus, such information is not subject to the Sunshine Law or Public Records Law. This helps facilitate a port authority's ability to foster economic development efforts while working with private businesses.

Exemption from the Requirement of the Use of Prevailing Wage

Under recent changes to Ohio law, port authorities are exempt from the prevailing wage requirements for public improvements⁹⁹ and port authority facilities¹⁰⁰ undertaken by, or under contract for, a port authority. Port authorities have provided assistance to economic development projects by offering sales-tax exemptions for building materials purchased for new construction projects without triggering the requirement to pay prevailing wages on the labor component of the building project.

Federal and State Tax Exemptions

A tax exemption for port authority property and securities is an advantage of creating such a structure over other entities, such as Community Improvement Corporations or

⁹⁹ See O.R.C. section 4115.03 to 4115.16 (section 4115.04) for public improvements undertaken by, or under contract for, a port authority as defined in section 4582.01 or 4582.21 of the O.R.C.

¹⁰⁰ See O.R.C. section 4582.12, which exempts a port authority from the prevailing wage requirements when the port authority elects to construct a port authority facility.

not-for-profit corporations. Port authority facilities are not subject to property, income, or sales and franchise taxes; *provided that such exemptions do not apply to any port authority property leased to a third party under a written lease with a term longer than one year*. The issuance of tax-exempt securities is generally limited by federal tax law to situations where there is a governmental purpose for the securities.

FEDERAL TAX CREDIT PROGRAMS

Programs Discussed:

- Historic Preservation Tax Credit Program
 - New Markets Tax Credit Program
-

Historic Preservation Tax Credit Program

The Federal Historic Preservation Tax Credit (HPTC) is a nonrefundable tax credit that encourages private sector investment in the rehabilitation and re-use of certified historic and older buildings by providing federal income tax incentives for the rehabilitation of historic income producing properties. The National Park Service (NPS) and the Internal Revenue Service (IRS) administer the program in partnership with state historic preservation offices around the country.

To qualify, one must have a certified historic structure. To be certified, the building must be listed individually on the National Register of Historic Places (National Register) *or* be a contributing part of a historic district that is either listed on the National Register or certified as eligible for the National Register. Under the provisions of the Tax Reform Act of 1986,¹⁰¹ the program provides a 20 percent and a 10 percent tax credit:

20 Percent Tax Credit

A 20 percent HPTC income tax credit is available for the rehabilitation of historic, income producing buildings that are determined by the Secretary of the Interior, through the NPS, to be “certified historic structures.” The state historic preservation offices and the NPS review the rehabilitation work to ensure that it complies with the Secretary of the Interior’s Standards for Rehabilitation prior to receiving the HPTC. The IRS defines qualified rehabilitation expenses on which the credit may be taken. Owner-occupied residential properties do not qualify for the HPTC.

¹⁰¹ See PL 99-514; Internal Revenue Code Section 47 [formerly Section 48(g)].

10 Percent Tax Credit

The 10 percent HPTC tax credit is available for the rehabilitation of non-historic buildings placed in service before 1936. The building must be rehabilitated for nonresidential use. In order to qualify for the tax credit, the rehabilitation must meet three criteria: 1) at least 50 percent of the existing external walls must remain in place as external walls, 2) at least 75 percent of the existing external walls must remain in place as either external or internal walls, and 3) at least 75 percent of the internal structural framework must remain in place. There is no formal review process for rehabilitations of non-historic buildings.

In all cases, the rehabilitation must be a substantial one and must involve a depreciable building. The credit may be subtracted directly from federal income taxes owed by the owner.¹⁰² Projects must meet the minimum expenditure test within a two-year measuring period, but applicants may take up to five years to complete a phased project if the plans and specifications are approved in advance of construction. Lastly, the applicant must pay a fee to the NPS; the fee shall be no less than \$250 and no greater than \$2,500, and shall be based on the qualifying rehabilitation expenditures.

New Market Tax Credit Program

The New Markets Tax Credit¹⁰³ (NMTC) is a nonrefundable tax credit established by Congress in 2000 to attract new or increased investments into existing companies and real estate projects located in low-income communities. The NMTC attracts investment capital by permitting individual and corporate investors to receive a tax credit against their federal income tax return in exchange for making equity investments in specialized financial institutions called Community Development Entities (CDEs).

CDEs apply to the Community Development Financial Institutions (CDFI) Fund through a competitive application process each year, not for tax credits directly, but for an award

¹⁰² The Internal Revenue Service is the final judge of economic matters relative to certified rehabilitations. Therefore, it is advisable that you consult with a tax accountant or lawyer before completing your tax return.

¹⁰³ See Section 305 of H.R. 8 of the American Taxpayer Relief Act of 2012

of “allocation authority” — that is, the authority to raise a certain amount of capital through qualified equity investments from investors. The CDFI Fund in the U.S. Department of the Treasury has been authorized to administer the program. The credit totals 39 percent of the original investment amount and is claimed over a period of seven years (5 percent for each of the first three years, and 6 percent for each of the remaining four years). The investment in the CDE cannot be redeemed before the end of the seven-year period.

As a nonpermanent program, the NMTC has required program renewal during each session of Congress. Most recently, the NMTC program was set to expire on December 31, 2011; however, it was renewed in H.R. 8, the American Taxpayer Relief Act of 2012 for another two years (ending December 31, 2013).

FEDERAL LOAN PROGRAMS

Programs Discussed:

- 7(a) Loan Program
 - 504 Loan Program
-

7(a) Loan Program

The 7(a) Loan Program¹⁰⁴ is the Small Business Administration's (SBA) primary loan program for assisting start-up and existing small businesses with financing for a variety of general business purposes. The SBA does not make loans itself, but rather guarantees loans made by participating lending institutions. In this way, taxpayer funds are only used in the event of borrower default. This reduces the risk to the lender, but not to the borrower, who remains obligated for the full debt, even in the event of default.

While the vast majority of companies are eligible for financial assistance from the SBA, some are not. Ineligible companies include those engaged in illegal activities, loan packaging, speculation, multi-sales distribution, gambling, investment or lending, or where the owner is on parole.

The specific terms of SBA loans are negotiated between the applicant and the participating financial institution, subject to the requirements of the SBA. The SBA can guarantee as much as 85 percent on loans of up to \$150,000 and 75 percent on loans of more than \$150,000. 7(a) loans have a maximum loan amount of \$5 million. Interest rates may be fixed or variable and are pegged to the prime rate, the LIBOR rate or an optional peg rate.

Loan terms are based on the ability to repay, the purpose of the loan proceeds and the useful life of the assets financed. The maximum term of loans used to finance fixed assets, other than real estate, will be limited to the economic life of the asset, not to exceed 25 years. The 25-year maximum will generally apply to the acquisition of land

¹⁰⁴ See Small Business Act of 1953 (P.L. 83-163, as amended). There are several 7(a) subprograms that offer streamlined and expedited loan procedures, including the SBA Express, Patriot Express, Small Loan Advantage and Community Advantage Pilot programs. See <http://www.sba.gov/category/navigation-structure/loans-grants/small-business-loans/sba-loan-programs/7a-loan-program>.

and buildings or the refinancing of debt incurred in their acquisition. Terms for a working capital or inventory loan should be appropriate to the borrower's ability to repay within up to 10 years. When loan proceeds will be used for a combination of purposes, the maximum term can be a blended term based on the use of proceeds or up to the maximum for the asset class comprising the largest percentage of the use of proceeds.

504 Loan Program

The Small Business Administration's (SBA) 504 Loan¹⁰⁵ is an economic development loan program that offers small businesses another avenue for business financing, while promoting business growth and job creation. The 504 Loan provides approved small businesses with long-term, fixed-rate financing used to acquire fixed assets for expansion or modernization. 504 Loans are made available through Certified Development Companies (CDCs), the SBAs community-based partners for providing 504 Loans. CDCs are certified and regulated by the SBA and work with the SBA and participating lenders (typically banks) to provide financing to small businesses, which accomplishes the goal of community economic development.

504 Loans are typically structured with the SBA providing 40 percent of the total project costs, a participating lender covering up to 50 percent of the total project costs and the borrower contributing 10 percent of the project costs. Under certain circumstances, a borrower may be required to contribute up to 20 percent of the total project costs. Total project costs may include the following:

- Building purchases and renovations;
- Land and land improvements;
- Equipment and fixtures;
- Long-term machinery;
- Certain furniture;
- Refinancing of debt for an expansion of the company's facilities or equipment;
- and

¹⁰⁵ See Small Business Investment Act of 1958, Title V, Section 504, Public Law 85-699.

- Professional fees, soft costs and closing costs.

It is possible to fully finance project costs with a 504 Loan. Most commercial bank loans finance only a percentage of the purchase price/appraised value, which requires borrowers to pay closing and soft costs out of pocket. If borrowers opt to sell their property at a later time, 504 Loans are assumable.

To be eligible for a 504 Loan, the company must be a for-profit corporation, partnership or proprietorship and fall within the size standards¹⁰⁶ set by the SBA. The company must plan to use over half (51 percent) of the property for its own operations within one year of ownership; if the building is to be newly constructed, the borrower must use 60 percent at once and plan to occupy 80 percent. Loans cannot be made to companies engaged in nonprofit, passive or speculative activities.

¹⁰⁶ Businesses whose net worth does not exceed \$15 million and net after-tax profits average less than \$5 million during the previous two years prior to application.

FEDERAL GRANT/SPECIAL PURPOSE PROGRAMS

Programs Discussed:

- EB-5 Immigrant Investor Program
 - EB-5 Regional Center Program
 - U.S. Foreign-Trade Zone Program
 - Foreign-Trade Sub Zone Program
-

EB-5 Immigrant Investor Program

The U.S. Congress created the fifth employment-based preference (EB-5) immigrant visa category¹⁰⁷ in 1990 for qualified foreigners seeking to invest in job-creating economic development projects or companies that will benefit the U.S. economy in return for a U.S. green card. The project or business must create or save at least 10 full-time jobs for U.S. workers. The basic amount required to invest is \$1 million, although that amount is reduced to \$500,000 if the investment is made in a rural area or an area with high unemployment.

Once the investment in a qualifying project or company has been made, the investor receives a conditional green card for two years. After that period, the investor must prove that their investment has been maintained and that the 10 or more jobs continue to exist. Once this evidentiary threshold is satisfied, the conditional status is removed.

Of the 10,000 EB-5 green cards available each year through the U.S. Citizenship and Immigration Services (USCIS), the managing federal agency, 3,000 are reserved for foreign nationals who invest through an EB-5 Regional Center (Regional Center). The 3,000 is not a limit, but the amount reserved specifically for Regional Center-based investments.

EB-5 Regional Center Program: To encourage foreign investment in the U.S. economy through the EB-5 category, Congress created an EB-5 Regional Center Pilot Program¹⁰⁸ in 1992. By so doing, Congress permitted the managing federal immigration agency — the Immigration and Naturalization Service, which became the United States Citizenship

¹⁰⁷ See Section 203(b)(5) of the Immigration and Nationality Act and 8 CFR 204.6 and 8 CFR 216.6, respectively.

¹⁰⁸ See Section 610 of Public Law 102-395.

and Immigration Services (USCIS) in 2003 — to designate qualified applicants as Regional Centers, eligible to accept EB-5 capital for economic development in the United States. A Regional Center is a private enterprise/corporation or a regional governmental agency with a targeted investment program within a defined geographic region.

The EB-5 Regional Center Program does not require that the foreign investor's enterprise itself directly employ 10 U.S. workers. Instead, it is enough if 10 or more jobs will be created directly or indirectly as a result of the investment. The Regional Center Investment Program aids foreign investors by directing and professionally managing their investment in the designated business and geographic focus of their Regional Center.

Before an investor can participate in a Regional Center's EB-5 Investment Program, each investor must independently petition USCIS for an EB-5 visa. USCIS solely determines whether the investor qualifies for the EB-5 visa. USCIS' due diligence includes a full background check, including detailed review of the sources of the investor's funds (to confirm their lawful origin), family history, and other representations of the head of household and his immediate family members under the age of 21.

As with the regular EB-5 Program, qualified investors investing through a Regional Center first receive a conditional green card valid for two years. At the end of that time, the investor files another application with USCIS showing that their money was “at risk” during the two-year period and that the jobs have been created. Once those applications have been approved, the investor and his immediate family become permanent green card holders and can later apply to become U.S. citizens.

For investors, the whole EB-5 process takes approximately three to five years or longer depending upon the timeliness, quality and validity of the investor's submissions. The program has been renewed several times and is expected to be renewed again, but is currently due to expire September 30, 2015.

U.S. Foreign-Trade Zone Program

The U.S. Foreign-Trade Zone¹⁰⁹ (FTZ) is a special-purpose district created to encourage U.S.-based companies to maintain and expand their operations in the United States by removing certain disincentives associated with manufacturing in the U.S. The duty on a product manufactured abroad and imported into the United States is assessed on the finished product rather than by its individual parts or components. The U.S.-based manufacturer finds itself at a disadvantage compared with its foreign competitors when it must pay a higher rate on parts, materials or components imported for use in a manufacturing process. Therefore, the goal of the FTZ Program is to correct this imbalance by treating products made in the FTZ, for the purpose of tariff assessment, as if they were manufactured abroad. At the same time, the United States benefits because the company uses U.S. labor, services and inputs to manufacture its product.

The Foreign-Trade Zones Act of 1934 created the FTZ Program, which establishes secure areas under U.S. Customs and Border Protection (CBP) supervision that are generally considered outside CBP territory upon activation. Typically located in or adjacent to CBP ports of entry, FTZs are the U.S.'s version of what are known internationally as free-trade zones. The act also created the interagency Foreign-Trade Zones Board, comprised of representatives from the departments of Commerce and Treasury and the Army, to review and approve applications to establish, operate and maintain FTZs. The board issues FTZ "grants" to municipal governments, port authorities and nonprofit corporations to establish FTZs, which are known as "general purpose" FTZs. The board may approve any FTZ or FTZ "subzone" that it deems necessary to adequately serve "the public interest." The board also regulates the administration of FTZs and the rates charged by FTZ "grantees."

Foreign and domestic merchandise may be moved into FTZs for operations, not otherwise prohibited by law, including storage, exhibition, assembly, manufacturing, and processing. FTZ sites are subject to the laws and regulations of the United States as well

¹⁰⁹ See Foreign-Trade Zones Act of 1934, as amended (19 U.S.C. 81a-81u). The Foreign-Trade Zones Act is administered through two sets of regulations, the FTZ Regulations (15 CFR Part 400) and CBP Regulations (19 CFR Part 146).

as those of the states and communities in which they are located. Under FTZ procedures, the usual formal CBP entry procedures and payments of duties are not required on the foreign merchandise unless and until it enters CBP territory for domestic consumption, at which point the importer generally has the choice of paying duties at the rate of either the original foreign materials or the finished product. Domestic goods moved into the FTZ for export may be considered exported upon admission to the FTZ for purposes of excise tax rebates and drawback.

Foreign-Trade Sub Zones: FTZs are divided into general-purpose zones and Subzones. General-purpose FTZs involve public facilities that can be used by more than one firm, and are most commonly ports or industrial parks used by small to medium sized businesses for warehousing/distribution and some processing/assembly. FTZ Subzones, on the other hand, are sponsored by general-purpose FTZs, but typically involve a single firm's site which is used for more extensive manufacturing/processing or warehousing/distribution that cannot easily be accomplished in a general-purpose FTZ.

An initial step for companies interested in obtaining FTZ Subzone status for some or all of the company's U.S. facilities is to ask the grantee of the appropriate general purpose FTZ to submit an application that designates the company's facilities as a Subzone of the general purpose FTZ. While the company seeking FTZ Subzone status would prepare the applications, the applications would be submitted to the FTZ board under the name of the FTZ grantee.

When a company receives authorization to operate a facility as an FTZ Subzone, it must implement security and inventory control measures that will ensure the protection of Customs revenues. The designated FTZ area must have appropriate security and the FTZ and FTZ Subzone operators must file an annual report with the Board that summarizes the activities at the FTZ Subzone.