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New Ohio Budget Bill Delivers Updated Economic Development Incentives

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On July 4, 2023, Governor Mike DeWine signed Amended Substitute House Bill 33 (H.B. 33 or the Budget Bill), which creates the biennial budget for state fiscal years (SFY) 2024-2025 (July 1, 2023-June 30, 2025). H.B. 33 delivers some new initiatives and some important changes to economic development in the State of Ohio through the Ohio Department of Development (ODOD). The General Assembly also enacted and amended important housing incentives through H.B. 33, which we plan to address in a separate client alert.

All Ohio Future Fund:

After the Governor's veto of much of the new language from the General Assembly, the Budget Bill renames the Investing in Ohio Fund the All Ohio Future Fund (Fund 5XM0) and transfers up to \$667,000,000 to the fund (from surplus general revenue, per Budget Bill Section 513.10) to promote economic development throughout the state, including infrastructure improvements. \$40,000,000 is budgeted for SFY2024.

The General Assembly had made a number of modifications to the Governor's original proposal, but veto 12 from the Governor's veto message leaves in place only the broad purpose of the fund and retains the requirement for Controlling Board approval to release funds. The veto message also noted that the DeWine-Husted Administration supports creating a strategic plan for extending electricity and natural gas to high-priority sites in advance of an end user, while ensuring that the process is fair to consumers.

Brownfield Remediation Program:

Although the Budget Bill provides \$350,000,000 for the Brownfield Remediation Fund, it also amends R.C. Section 122.6511 to designate a county lead entity under the program as follows: (1) if the county has a population of less than 100,000, or a population of more than 100,000 without a county land reutilization corporation (land bank), the ODOD Director must select the lead entity from a list of recommendations

made by the board of county commissioners of the county, and (2) if the county has a population of 100,000 or more and has a land bank, the land bank is the lead entity. More importantly, the new language specifies that grant sub-recipients may be local governments, nonprofit organizations, community development corporations, regional planning commissions, county land reutilization corporations, and community action agencies (but this list does not include for-profit entities).

Building Demolition and Site Revitalization Program:

\$150,000,000 is allocated for the Demolition and Site Revitalization Fund, and the Budget Bill amends R.C. Section 122.6512 in a manner comparable to the brownfield remediation program revisions, including with respect to the lead applicant and limitations of eligible recipients. It remains to be determined how the exclusion of for-profit entities from the list of potential sub-recipients of grant funds will impact the program.

Meat Processing Investment Program:

The Budget Bill includes \$14,000,000 for the Meat Processing Investment Program (MPIP) to award grants to Ohio custom processors of food animals from farms. The grants shall be used to support the construction of new, or improvements at existing, processing facilities.

Qualified Energy Project:

R.C. Section 5727.75 is amended to extend the termination of the exemption to the later of (i) the calendar year that the U.S. Secretary of the Treasury determines there has been, from 2022, a 75% or greater reduction in annual greenhouse gas emissions from electricity production in the U.S., or (ii) 2029. The Budget Bill reduces the ratio of required Ohio-domiciled employees for solar projects from 80% to 70% for projects complying with prevailing wage and apprenticeship requirements. A provision to broaden the definition of "Ohio-domiciled" was vetoed.

Other Programs Funded at New Levels or Extended:

Broadband programs: The Budget Bill provides \$50,000,000 for the Broadband Pole Replacement and Undergrounding Program and up to \$105,000,000 for the Ohio Broadband Equity, Access, and Deployment (BEAD) Program for infrastructure that supports the adoption of high-speed internet.

Rural Industrial Park Loan Program: \$30,000,000 (\$15,000,000 per year) will be available for Rural Industrial Park Loans, and the revised language allows a developer that previously received financial assistance under the Program to be eligible, provided the developer did not receive any previous assistance in the current biennium. The Budget Bill also adds a clarification that allows a developer to demonstrate its park does not compete with another park by obtaining the consent of the existing industrial park's owner. Loan awards may now be up to \$4,000,000.

Innovation Hubs: The Budget Bill provides up to \$125,000,000 for innovation hubs, but those hubs located within an existing innovation district, as defined by ODOD, are ineligible to receive funding. Funds awarded may be used for (1) capital expenses to establish an innovation hub near a research-oriented anchor institution, (2) recruiting or providing research and development opportunities within an innovation hub,

or (3) creating new or preserving existing jobs and employment opportunities.

Water and Sewer Quality Program (Fund 5CV34 ALI 1956A1): The Budget Bill provides \$124,000,000 to be used to award grants under the Water and Sewer Quality Program established in Section 259.30 of H.B. 168 of the 134th General Assembly and fund a new round of grants under which all political subdivisions can apply for water and sewer improvements under the program.

Individual Microcredential Assistance Program (IMAP, R.C. Section 122.1710): The Budget Bill provides increased maximum reimbursement amount for microcredential training providers participating in the program from \$250,000 to \$500,000 per fiscal year.

Motion Picture Tax Credits: H.B. 33 increases the annual tax credit cap from \$40,000,000 to \$50,000,000 and reserves \$5,000,000 for Broadway theatrical productions (and provides that any unused portion of the \$5,000,000 is carried forward to the following fiscal year's total credit amount, and continues to be reserved for Broadway theatrical productions). New R.C. Section 122.852 authorizes a refundable tax credit for production companies that complete qualifying capital improvement projects in Ohio (credit amount is 25% of the amount a production company spends to construct, acquire, repair, or expand facilities that will be used in a motion picture or theatrical production, up to \$5,000,000 per county and per project). Credits may be claimed against the financial institutions tax, income tax, and commercial activity tax. Moreover, the Budget Bill allows ODOD to decrease any portion of the \$25,000,000 capital cap and to instead use that amount to increase the \$50,000,000 motion picture cap. Submission of credit applications for production companies that complete qualifying capital improvement projects is delayed to July 1, 2024. The new language allows one transfer of the right to claim the credit, to multiple taxpayers at that time, and requires notice to ODOD.

Additional Statutory Changes:

The Job Creation Tax Credit (JCTC), in R.C. Section 122.17(K)(3), as well as the Job Retention Tax Credit, in R.C. Section 122.171(J)(3), now provide that the Tax Credit Authority may adjust the amount certified to be refunded one time if circumstances have changed, the taxpayer has not made a payment, and the amount to be refunded has not been certified to the Ohio Attorney General.

For certain programs and other purposes, including the Rural Industrial Park Loan Program, the Budget Bill alters the "distressed area" criteria in R.C. Section 122.16, including per capita income, unemployment rate, and other related statistics used to evaluate whether a county or municipality is a "distressed area," with updates every ten years rather than annually.

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

Vorys encourages you to contact your Vorys attorney or advisor with questions about these new incentive provisions. Please feel free to contact the following Vorys attorneys: Scott J. Ziance, 614.464.8287, sjziance@vorys.com; Aaron S. Berke, 330.208.1017, asberke@vorys.com; Christopher J. Knezevic, 614.464.5627, cjknezevic@vorys.com; Sean Byrne, 614.464.8247, spbyrne@vorys.com; Jonathan K. Stock, 614.464.5647, jkstock@vorys.com or Rebecca "Elissa" Wilson, 614.464.6224, rewilson@vorys.com.