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OHIO LEGISLATIVE SERVICE COMMISSION

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133rd General Assembly

Bill Analysis

Version: As Introduced

Primary Sponsors: Reps. Ghanbari and Patterson

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SUMMARY

- Creates the H2Ohio Trust Fund to provide for the protection, preservation, and restoration of the water quality of Ohio's lakes and rivers.
- Requires the Treasurer of State to act as trustee of the H2Ohio Trust Fund and grants the Treasurer full power to invest Fund money.
- Creates two entities – the H2Ohio Advisory Council and the H2Ohio Endowment Board – and assigns various duties and responsibilities to each regarding the management and administration of the Fund.
- Authorizes the H2Ohio Advisory Council to disburse money from the Fund (up to \$50 million per fiscal year) by issuing loans and awarding grants to applicants that apply for money to address water quality issues in Ohio.
- If Fund money is appropriated specifically to the Department of Natural Resources, Department of Agriculture, or the Environmental Protection Agency, requires the Directors of those state agencies to each prepare an annual plan detailing how the money will be spent.
- Requires the Council to review and approve each agency's annual plan before the agency may spend the appropriated money.
- Requires the H2Ohio Endowment Board to make recommendations to the Treasurer of State regarding the issuance of securities to raise money for deposit in the H2Ohio Trust Fund.
- Authorizes the Treasurer to issue securities (revenue bonds) to generate money for deposit in the H2Ohio Trust Fund to be disbursed by the H2Ohio Advisory Council.
- Creates the H2Ohio Security Repayment Fund consisting of pledged revenues to be used to retire debt issued by the Treasurer.

DETAILED ANALYSIS

Overview

The bill creates the H2Ohio Trust Fund to provide for the protection, preservation, and restoration of the water quality of Ohio's lakes and rivers. The Fund is in the custody of the Treasurer of State, but is not a part of the state treasury. The Treasurer of State is the trustee of the Fund and has full power to invest Fund money.

In order to manage and administer the H2Ohio Trust Fund, the bill creates two entities – the H2Ohio Advisory Council and the H2Ohio Endowment Board – and assigns various duties and responsibilities to each. The bill also assigns various duties and responsibilities to the Treasurer of State.

The H2Ohio Advisory Council is tasked with disbursing money from the Fund (up to \$50 million per fiscal year), in the form of loans and grants, to applicants that apply for money to address water quality issues in Ohio. If Fund money is appropriated specifically to the Department of Natural Resources, Department of Agriculture, or the Environmental Protection Agency, the Directors of those agencies each must prepare an annual plan detailing how the money will be spent. The Council must review and approve each plan before an agency may spend the appropriated money.

The H2Ohio Endowment Board is tasked with making recommendations to the Treasurer regarding the issuance of securities to raise money for deposit the H2Ohio Trust Fund. The Board also may engage in real property transactions and adopt an investment policy for the Fund and submit it to the Treasurer.

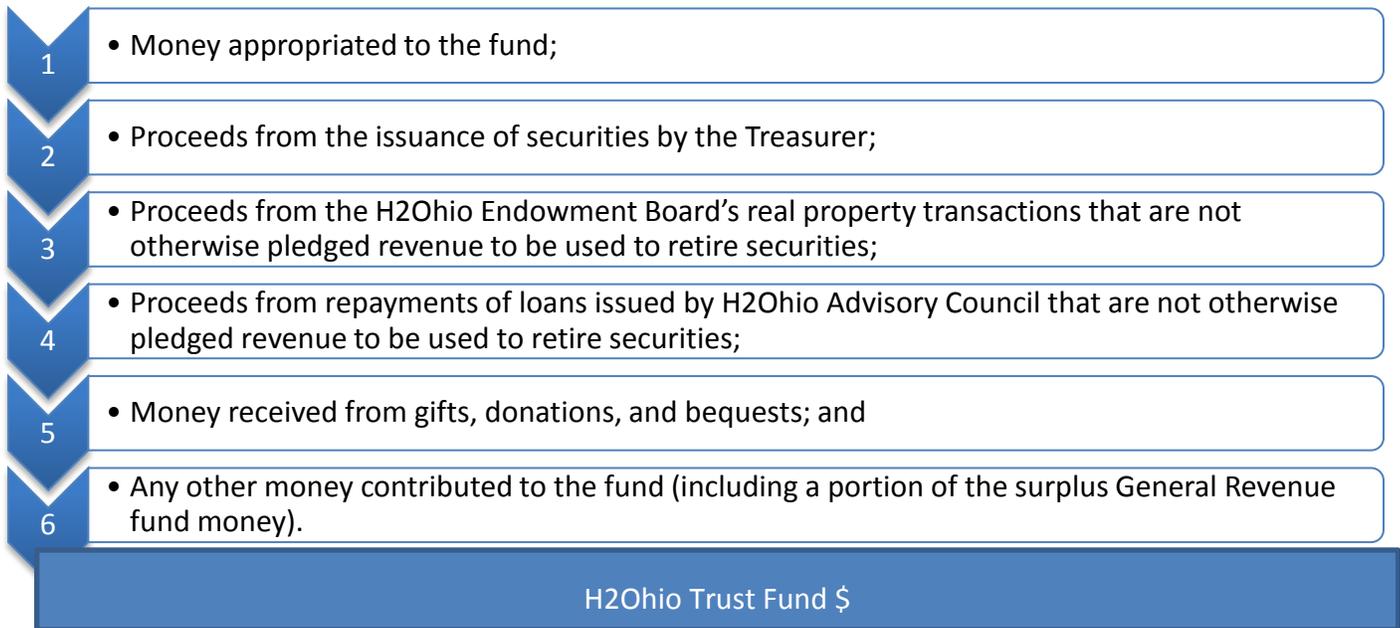
Based on the Endowment Board's recommendations, the Treasurer may issue securities to generate money for the Fund (to be disbursed by the H2Ohio Advisory Council). The securities are revenue bonds secured by pledged revenues, including loan repayments. The securities are not general obligation bonds backed by the full faith and credit of the state.

The bill creates the H2Ohio Security Repayment Fund consisting of pledged revenues. The Treasurer must use the revenues to retire debt issued under the bill. This Fund is separate from the H2Ohio Trust Fund so that money used to retire debt is separate from money used for disbursements from the H2Ohio Trust Fund.¹

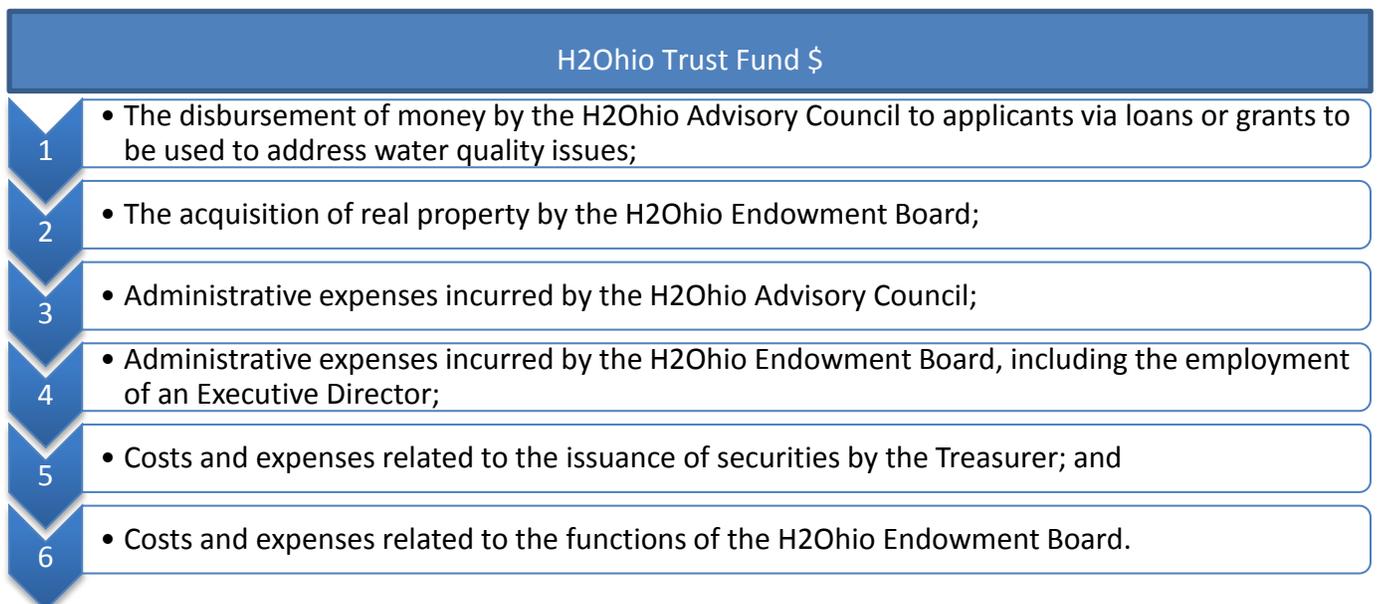
¹ R.C. 126.601 through 126.67.

H2Ohio Trust Fund: management and purposes

The H2Ohio Trust Fund consists of all of the following money sources:²



The Fund may be used for any of the following purposes:³



² R.C. 126.601(A).

³ R.C. 126.601(B).

As indicated above, the Treasurer acts as the Fund's trustee and has full power to invest money in the Fund. The Treasurer must discharge those duties solely in the interest of the Fund's purposes with care, skill, prudence, and diligence. The Treasurer must diversify the Fund's investments so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so. All investment earnings of the Fund are credited to the Fund.⁴

State agency plans

The Directors of the Department of Natural Resources, Department of Agriculture, and the Environmental Protection Agency must each prepare an annual plan for H2Ohio Trust Fund money appropriated to the respective agency. Each plan, at a minimum, must describe the following:

1. Funding priorities;
2. The specific programs, projects, or entities proposed to receive funding; and
3. The internal controls and external accountability measures that will be put in place to ensure that the funding is properly used.

Each Director must deliver their respective annual plan to the H2Ohio Advisory Council by March 1 each year. An agency cannot expend money appropriated from the Fund unless the Council approves the plan submitted by the agency's Director.⁵

H2Ohio Advisory Council

The H2Ohio Advisory Council, created by the bill, is not subject to sunset review⁶ and consists of the following 18 members:

1. The Director of Agriculture (or the Director's designee);
2. The Director of Environmental Protection (or the Director's designee);
3. The Director of Natural Resources (or the Director's designee);
4. The Executive Director of the Ohio Lake Erie Commission (who serves as a nonvoting, ex officio member);
5. Two members appointed by the President of the Senate (one member of the majority party and one member of the minority party) who serve at the pleasure of the President;
6. Two members appointed by the Speaker of the House of Representatives (one member of the majority party and one member of the minority party) who serve at the pleasure of the Speaker; and

⁴ R.C. 126.601(C).

⁵ R.C. 126.64.

⁶ R.C. 126.61(G).

7. Ten members appointed by the Governor with the advice and consent of the Senate (one who represents the interests of counties; one who represents the interests of townships; one who represents the interests of municipal corporations; one who represents the interests of public health; two who represent the interests of business or tourism; two who represent agricultural interests; and two who represent statewide environmental advocacy organizations).⁷

The ten members appointed by the Governor must reflect the demographic and economic diversity of the population of Ohio. Additionally, those members must be from geographically diverse areas of Ohio so that all areas of Ohio have representation on the Council. Of the initial members appointed by the Governor, five are appointed for two years and four are appointed for one year. Thereafter, terms of office for those members are two years. The Governor may reappoint a member to the Council.⁸

Ohio Lake Erie Commission, Department of Agriculture, and Environmental Protection Agency must provide administrative support to the Council and the Ohio Lake Erie Commission must provide the location for council meetings.⁹

The Governor must appoint a member of the Council to serve as the Chairperson of the Council and the Executive Director of the Ohio Lake Erie Commission, unless appointed to be Chairperson, serves as the Vice-Chairperson of the Council. If the Executive Director is the Chairperson, the Council must annually select a person from among its members to serve as Vice-Chairperson. A majority vote of a quorum of the members of the Council is necessary to take action on any matter.¹⁰

All members of the Council must file a disclosure statement with the Ohio Ethics Commission. Members of the Council serve without compensation for attending Council meetings, but receive their annual and necessary traveling and other expenses incurred in the performance of their official duties in accordance with the rules of the Office of Budget and Management.¹¹

H2Ohio Advisory Council bylaws

The bill requires the H2Ohio Advisory Council to adopt bylaws governing its operation, including bylaws that establish all of the following:

1. The frequency of meetings;
2. Procedures for reviewing annual plans submitted by the Directors of Agriculture, Natural Resources, and Environmental Protection;

⁷ R.C. 126.61(A).

⁸ R.C. 126.61(B).

⁹ R.C. 126.61(F).

¹⁰ R.C. 126.61(C).

¹¹ R.C. 126.61(D).

3. Procedures for approving or disapproving annual plans submitted by those Directors, including a process for resubmitting disapproved plans;
4. Procedures for applicants to apply for loans and grants from the H2Ohio Trust Fund; and
5. Any other policy or procedure that the Council determines is necessary to carry out its duties.¹²

H2Ohio Advisory Council disbursement of funds

The bill requires the H2Ohio Advisory Council to disburse H2Ohio Trust Fund money for any of the following purposes:

1. Awarding or allocating grants or money, issuing loans, or making purchases for the development and implementation of projects and programs, including remediation projects, that are designed to address water quality priorities;
2. Funding cooperative research, data gathering and monitoring, and demonstration projects related to water quality priorities;
3. Encouraging cooperation with and among leaders from state legislatures, state agencies, political subdivisions, business and industry, labor, agriculture, institutions of higher education, environmental organizations, and water conservation districts; and
4. Other purposes, policies, programs, and priorities identified by the Ohio Lake Erie Commission in coordination with state agencies or boards responsible for water protection and water management, provided that the purposes, policies, programs, and priorities align with a statewide strategic vision and comprehensive periodic water protection and restoration strategy.¹³

The H2Ohio Endowment Board must approve the amount that the Council may disburse in each fiscal year. That amount cannot exceed \$50 million.¹⁴ The Council cannot disburse more than the amount approved by the Board.¹⁵

H2Ohio Advisory Council – additional duties

The H2Ohio Advisory Council is responsible for notifying the public of available H2Ohio Trust Fund money and of how to apply to receive loans and grants from the Fund.¹⁶

The Council, in coordination with the Ohio Lake Erie Commission, also must submit a report to the General Assembly and the Governor annually, beginning August 31, 2020. The

¹² R.C. 126.62.

¹³ R.C. 126.63(A).

¹⁴ R.C. 126.65(I).

¹⁵ R.C. 126.63(B).

¹⁶ R.C. 126.63(C).

report must address activities undertaken with respect to the H2Ohio Trust Fund during the preceding fiscal year, and revenues and expenses for that year.¹⁷

H2Ohio Endowment Board

The H2Ohio Endowment Board, which must advise the Treasurer regarding investment and debt management matters related to the H2Ohio Trust Fund, is not subject to sunset review¹⁸ and consists of the following 12 members:

1. Three members appointed by the Governor who serve ten-year terms (however, initial terms are three, six, and nine years, respectively);
2. Three members appointed by the Governor, one serves a seven-year term, one serves a five-year term, and one serves a three-year term;
3. Three members appointed by the Speaker of the House of Representatives, one serves a seven-year term, one serves a five-year term, and one serves a three-year term; and
4. Three members appointed by the President of the Senate, one serves a seven-year term, one serves a five-year term, and one serves a three-year term.¹⁹

Members of the Board receive no compensation as board members, but are reimbursed for their necessary expenses incurred in the performance of their official duties. The Board must select from among its members a chairperson, a vice-chairperson, and a secretary. These officers serve a one-year term and may be reappointed. The appropriate appointing authority may remove any member of the Board from office for inefficiency, neglect of duty, malfeasance, misfeasance, or nonfeasance.²⁰

H2Ohio Endowment Board duties

Employing an Executive Director

The bill requires the Board to employ an Executive Director to serve at the pleasure of the Board who serves in the unclassified civil service at a fixed salary according to state law.²¹ The Board must prescribe the powers and duties of the Executive Director, including coordinating efforts between the Board, the H2Ohio Advisory Council, and the Treasurer.²²

¹⁷ R.C. 126.63(D).

¹⁸ R.C. 126.65(J).

¹⁹ R.C. 126.65(A).

²⁰ R.C. 126.65(D).

²¹ See R.C. 124.14, not in the bill.

²² R.C. 126.65(E)(1).

The Executive Director must submit to the Director of Budget and Management, by June 1 each year, a request for surplus revenue to be transferred to the H2Ohio Trust Fund in an amount determined by the Board.²³

Under current law, by July 31 of each year, the Director of Budget and Management must determine the surplus revenue that existed on the preceding June 30. The Director must then transfer the surplus from the General Revenue Fund (to the extent of the unobligated, unencumbered balance on the preceding June 30 in excess of 0.5% of the General Revenue Fund revenues in the preceding fiscal year) to the Budget Stabilization Fund and the Income Tax Reduction Fund. Currently, the surplus is first transferred to the Budget Stabilization Fund in an amount necessary for the balance of that fund to equal 8.5% of the General Revenue Fund revenues of the preceding fiscal year. The remaining surplus is transferred to the Income Tax Reduction Fund.

The bill requires the Director of Budget and Management to transfer an amount that is up to the amount requested by the Executive Director to the H2Ohio Trust Fund (after transferring money to the Budget Stabilization Fund, but before transferring the surplus to the Income Tax Reduction Fund).²⁴

Recommendations to the Treasurer and management of the fund

The bill requires the Board to make recommendations to the Treasurer regarding the issuance of securities to generate money for the H2Ohio Trust Fund. The Board also may adopt an investment policy to submit to the Treasurer.²⁵

As part of the Board's duties, the Board may do both of the following:

1. Appoint or provide for the appointment of agents, consultants, independent contractors, or any other type of administrative, investment, financial, or accounting experts as are necessary, in the judgment of the Board;²⁶ and
2. Buy, sell, and lease real property.²⁷

Treasurer of State

Based on recommendations made by the H2Ohio Endowment Board, the bill authorizes the Treasurer to issue securities (also known as revenue bonds) to pay for costs related to disbursing money from the H2Ohio Trust Fund by the H2Ohio Advisory Council. The securities are backed by repayments of loans issued from the H2Ohio Trust Fund and any other pledged revenues (such as proceeds from the Board's real property transactions). The securities are special obligation securities and are not general obligations of the state. They do not constitute

²³ R.C. 126.65(E)(2).

²⁴ R.C. 131.44(B)(1).

²⁵ R.C. 126.65(F).

²⁶ R.C. 126.65(G).

²⁷ R.C. 126.65(H).

debt for which the full faith and credit of the state may be pledged. The holder or owner of the securities has no right to have money raised by taxation by the state or any political subdivision obligated or pledged, and money so raised is not to be obligated or pledged, for the payment of principal or interest on the securities. Each issued security must bear on its face a statement to that effect.²⁸ Since the securities are secured by pledged revenues, the bill also creates the H2Ohio Security Repayment Fund consisting of pledged revenues. The Treasurer must use money in that Fund to retire debt issued under the bill.²⁹

The Treasurer, when issuing securities to raise revenue for the H2Ohio Trust Fund, must do all of the following:

1. Issue the securities under just, reasonable, and financially sound procedures, terms, and conditions;
2. Take all actions necessary to pay debt incurred by the issuance of securities and execute all necessary documents (i.e., issued securities, trust agreements, leases, other financing documents, etc.) to provide for the pledge, protection, and disposition of the pledged revenues; and
3. Determine the maximum maturity of the securities.

The Treasurer may use all allowable revenue sources to pay debt incurred by the issuance of securities and may issue securities to fund or refund the already issued securities. The Treasurer also may issue securities in anticipation of the proceeds of the already issued securities.³⁰

HISTORY

Action	Date
Introduced	05-13-19

H0007-I-133/ks

²⁸ R.C. 126.66(A).

²⁹ R.C. 126.67.

³⁰ R.C. 126.66(C) to (G).