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H.B. 104
133rd General Assembly

Fiscal Note & Local Impact Statement

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Version: As Introduced

Primary Sponsor: Rep. Stein

Local Impact Statement Procedure Required: Yes

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Highlights

- The bill creates the nonprofit Ohio Nuclear Development Authority and for-profit Ohio Nuclear Development Consortium, which would regulate state activities involving nuclear research and engage in commercial nuclear-related businesses, respectively.
- The bill permits the Consortium to build one or more demonstration power producing nuclear reactors located in Ohio. The Treasurer of State must (1) provide an initial public offering of uncertificated private common Consortium stock that raises $1 billion and (2) establish an online exchange on which the stock may be traded. The Treasurer's Office is authorized to charge each stock purchaser a monthly fee to cover the costs of the Office.
- The bill authorizes up to $350 million in tax credits for original investors in the Ohio Nuclear Development Consortium. Tax credits would be nonrefundable and transferrable. Credits could be claimed no earlier than five years after they are issued. Credits claimed would reduce revenue to various state funds, depending on the tax against which each credit was claimed; the revenue losses would primarily affect the GRF, but if claimed against the petroleum activity tax they would primarily affect the Petroleum Activity Tax Public Highways Fund.
- The bill creates additional duties of varying magnitudes for the Treasurer of State, Development Services Agency, Ohio Attorney General, and Auditor of State, but does not appropriate any funds for these activities.

Detailed Analysis

The bill establishes the Ohio Nuclear Development Authority (or "Authority"). The Authority is created as a nine-member, nonprofit entity to serve as an information resource, to promote and facilitate agreements, to foster partnerships, to encourage advanced-nuclear technologies, and to serve as a regulatory authority for state activities involving nuclear research and the disposal of radioactive waste. On or before July 4 of each year, the Authority must submit an updated strategic plan, an annual summary of its activities, and recommendations for the support and expansion of the purposes specified in H.B. 104.

Within 180 days after the appointment of its initial members, the Authority must provide for the formation of a for-profit entity to be known as the Ohio Nuclear Development Consortium (or "Consortium"). The purposes of the Consortium include carrying out the mission of the Authority in making Ohio a leader in the commercial production of isotopes and in nuclear waste reduction and storage.

H.B. 104 permits the Consortium, with the consent of a majority of its shareholders as well as the United States government, to build one or more demonstration power producing nuclear reactors located in Ohio. The reactor or reactors must not transmit electricity or district heat outside of Ohio.

Funding the Nuclear Development Authority and Consortium

Under Section 4164.27 of the bill, support for the Authority's and Consortium's activities may come from a variety of sources. The bill requires the Authority to apply for, solicit, and accept from any source, including any agency of Ohio, any other state, the United States, any political subdivision, any Consortium shareholder, or any private corporation or other entity, any of the following:

1. Grants, including grants available under federal law;
2. Aid; or
3. Contributions of money, property, or other things of value, which must be held, used, and applied for the purposes specified under the bill.

Other than potentially receiving funding from a state agency, the bill does not provide funding for these entities using the state treasury.

The Consortium would be funded by shareholders, as the bill requires the sale of 20 million shares of the original offering of stock at a price of $50 per share. The Consortium is required to pay the administrative expenses of the Authority. Those expenses cannot exceed 5% of the shareholders' equity (e.g., $50 million of $1 billion) in the Consortium each year. The Consortium must annually report to the Authority on its nonproprietary activities.

Immediately after the Consortium's organization and before its first organizational meeting, the nonprofit eGeneration Foundation, or its successor entity, must act as an agent to encourage investment into the Consortium, to educate the public of the importance of isotopes, and to lobby the federal government, as the Authority approves. The bill permits eGeneration Foundation, or its successor entity, to spend Consortium-derived funds, at its discretion and with the approval of the Authority, of up to $1 million annually.[1]

[1] The bill imposes certain conditions on this provision, including that the foundation or its successor remains a nonprofit organization and pays not more than one manager $110,000 or less annually and no

Treasurer of State

The Treasurer of State's Office is required to provide equity management services for the Consortium, including providing for an initial offering of uncertificated private common Consortium stock that is set at 20 million shares at $50 per share. The Office must establish an online exchange to purchase, sell, and trade the stock. To cover the costs incurred by the Office in providing these services, the Treasurer of State may charge each purchaser of the stock a monthly fee, though the bill does not specify the amount of any such fee.

Nonrefundable tax credits

The bill authorizes a nonrefundable tax credit for a person that purchases stock in the Consortium from its initial offering. To obtain a certificate authorizing the purchaser to claim the credit, the shareholder must apply to the Director of the Development Services Agency (DSA). The credit may be claimed against any of several taxes, i.e., the commercial activity tax (CAT), personal income tax, financial institutions tax, insurance premiums tax, petroleum activity tax (PAT), and public utility excise taxes. However, it may not be claimed immediately. Instead, the credit may not be claimed until at least the fifth tax year after the tax year in which the certificate is issued or for any of the ten following years.

The amount of the credit is a percentage of the Consortium stock's purchase price. If the credit is claimed in the fifth year after the certificate is issued, the credit amounts to 10% of the purchase price. If a shareholder defers claiming the credit, the credit percentage increases by 2.5% each year until the credit is claimed. The table below illustrates the maximum possible cost for a given fiscal year. It is important to note that the maximum values in the rightmost column are not additive; the cumulative state revenue loss over the 15-year period cannot exceed $350 million.

Section 122.97 of the bill prohibits any credit from being claimed "for a tax year after the sooner of either (a) the fifteenth tax year after the tax year in which the certificate is issued or any calendar quarter in that tax year or (b) the tax year in which the consortium dissolves, terminates, or declares bankruptcy or any calendar quarter in that tax year." Under these restrictions, the cumulative state revenue loss could vary from $0 to $350 million, depending on the viability of the Consortium and the behavioral response of original investors.

Potential Costs Associated with Nonrefundable Tax Credits Authorized by H.B. 104				
Years After Tax Certificate Issued	Assumed Fiscal Year	Value of Qualified Consortium Stock	Tax Credit Percentage	Maximum Value of All Tax Credits
1	FY 2022	$1,000,000,000	0%	$0
2	FY 2023	$1,000,000,000	0%	$0

other employees more than $70,000. The bill permits the Authority to approve more discretionary spending for the foundation or its successor prior to the first organizational meeting of the Consortium.

Potential Costs Associated with Nonrefundable Tax Credits Authorized by H.B. 104				
Years After Tax Certificate Issued	Assumed Fiscal Year	Value of Qualified Consortium Stock	Tax Credit Percentage	Maximum Value of All Tax Credits
3	FY 2024	$1,000,000,000	0%	$0
4	FY 2025	$1,000,000,000	0%	$0
5	FY 2026	$1,000,000,000	10.0%	$100,000,000
6	FY 2027	$1,000,000,000	12.5%	$125,000,000
7	FY 2028	$1,000,000,000	15.0%	$150,000,000
8	FY 2029	$1,000,000,000	17.5%	$175,000,000
9	FY 2030	$1,000,000,000	20.0%	$200,000,000
10	FY 2031	$1,000,000,000	22.5%	$225,000,000
11	FY 2032	$1,000,000,000	25.0%	$250,000,000
12	FY 2033	$1,000,000,000	27.5%	$275,000,000
13	FY 2034	$1,000,000,000	30.0%	$300,000,000
14	FY 2035	$1,000,000,000	32.5%	$325,000,000
15	FY 2036	$1,000,000,000	35.0%	$350,000,000

Note: The values in the rightmost column are not additive. The cumulative state revenue loss over the 15-year period cannot exceed $350 million.

The fund or funds experiencing revenue losses from the tax credits would depend on the tax against which they were claimed. All the taxes (except possibly the PAT) would affect the GRF, but 15% of revenue from the CAT is deposited into local government property tax replacement funds and most of the revenue from the PAT is deposited into the Petroleum Activity Tax Public Highways Fund. Revenue initially deposited into the GRF (from any of the taxes) is shared with the Local Government Fund (LGF) and the Public Library Fund (PLF). Under current law, each fund will receive 1.66% of GRF tax revenue starting July 1, 2021.

Credit transferability and Development Services Agency

A person that holds a tax credit certificate previously issued by DSA may transfer the certificate and the right to claim the credit to another person. The new holder may then claim the credit on the same terms and within the same time period applicable to the shareholder who was initially issued the certificate. After the transfer is made, the bill requires the seller to certify the identity of the new holder to DSA.

DSA typically receives tax credit fees into the Tax Incentives Operating Fund (Fund 5JR0) to cover operating costs of tax credit programs the Agency oversees. This is the case for tax credits currently available, such as the Job Creation Tax Credit, the InvestOhio Tax Credit, the Motion Picture Tax Credit, and others. The bill does not explicitly state that fees may be charged under the new tax credit program, but if they are collected, the revenue would likely be deposited into Fund 5JR0 to pay DSA administrative expenses of the new tax credit.

Attorney General

The bill requires the Attorney General (AGO) to be the primary general counsel for the Authority, and the AGO must represent the interests of the Authority in any litigation concerning the Authority's activities with other states and with the federal government.

Auditor of State

The bill also requires the Auditor of State (AUD) to annually audit the private financial accounts of the Consortium. H.B. 104 specifies that the working papers and files of the AUD relating to such audits are not public records under section 149.43 of the Revised Code.