



# OHIO LEGISLATIVE SERVICE COMMISSION

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## Bill Analysis

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### **H.B. 771**

132nd General Assembly  
(As Introduced)

Rep. Stein

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### **BILL SUMMARY**

- Establishes the Ohio Medical-Isotope Economic Development Authority (Authority) and Consortium for the following purposes:
  - To be information resources on molten-salt research reactors, industrial isotopes, and medical-isotope technologies for state and national departments and agencies;
  - To make Ohio a leader in research and development, commercialization, production, and manufacturing techniques for the industry and in nuclear waste reduction and storage with respect to nuclear waste produced by nuclear reactors.
- Establishes the Authority as a nonprofit entity and grants it extensive power that is necessary and convenient to carry out its purposes, including the power to introduce legislation in the General Assembly and to exercise the power of eminent domain.
- Establishes the Consortium as a for-profit entity with power to fulfill its purposes for the benefit of Ohio residents and Consortium investors.
- Requires the Attorney General to be the primary general counsel of the Authority, the Auditor of State to annually audit the Consortium's financial accounts, and the Treasurer of State to provide equity management, stock issuance, and shareholder-related services to the Consortium.
- Conditionally authorizes a nonrefundable and transferable tax credit for investments in the Consortium, the value of which increases for each additional year the investor delays claiming the credit.

- Requires the General Assembly to set a cap on the amount of credits that may be awarded before any credits may be claimed.

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## CONTENT AND OPERATION

### Overview

The bill establishes the Ohio Medical-Isotope Economic Development Authority and Consortium to serve as a regulatory authority for state activities involving the research, development, and commercial production of medical isotopes and the reduction and storage of Ohio's nuclear waste not disposed of by the federal



government – with the goal of making Ohio a national and global leader in the production of medical isotopes. The bill is also intended to be used as a model for future legislation to further the pursuit of innovative research and development for any industry in Ohio.<sup>1</sup>

## Authority

### Formation; purpose

The bill creates and constitutes a nonprofit entity, the Ohio Medical-Isotope Economic Development Authority (Authority).<sup>2</sup> The Authority's exercise of powers is the performance of an essential governmental function and matters of public necessity for which public moneys may be spent and private property acquired.<sup>3</sup>

The bill states that the Authority is established for both of the following purposes:

- To be an information resource for Ohio, the U.S. Nuclear Regulatory Commission (USNRC), all U.S. military branches, and the U.S. Department of Energy (USDOE) on molten-salt research reactors, industrial isotopes, and medical-isotope technologies;
- To make Ohio (1) a national and global leader in molten-salt-research-reactor technology, in the commercial production of medical isotopes and research, and in industrial-isotope production for the purposes of commercialization, study, research, and development; and (2) a leader in all of the following:
  - The creation of federally approved or sanctioned state regulations that aid in the acceleration of new nuclear technologies;
  - The development and construction of new-type nuclear molten-salt-research-reactor designs, operating under ten megawatts thermal, unless greater operation is approved by the General Assembly for the purposes of producing medical or industrial isotopes;
  - The development of molten-salt-research-reactor manufacturing techniques;

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<sup>1</sup> R.C. 4164.01 to 4164.03.

<sup>2</sup> R.C. 4164.01(A).

<sup>3</sup> R.C. 4164.05.



- The research and development of high-level-nuclear-waste reduction and storage.<sup>4</sup>

## **Powers**

### **Ability to introduce legislation**

The bill permits the Authority, when both the House of Representatives and the Senate are in session, to introduce legislation requesting approval to pursue the construction of a molten-salt research reactor located in Ohio that would be licensed to operate at greater than ten megawatts thermal. The legislation must be reviewed as to form by the Legislative Service Commission or a similar entity prior to introduction. The Authority may introduce the legislation only after hearing proponent testimony, opponent testimony, and interested-party testimony and it has made all testimony available to the entire General Assembly. Upon special request and no later than 30 days after the legislation is introduced, the House and the Senate must call upon the yeas and nays the question of passing the legislation.<sup>5</sup>

The bill prohibits the Authority from pursuing construction of a molten-salt research reactor that would be licensed to operate at greater than ten megawatts thermal without the approval of the Governor and the General Assembly.<sup>6</sup>

### **Eminent domain**

The Authority has the right of eminent domain to acquire lands in order to meet its responsibilities under the bill.<sup>7</sup>

### **To carry out purposes**

Under the bill, the Authority has all the powers necessary and convenient to carry out its purposes under the bill, including the following:

- (1) To adopt, use, and alter at will a corporate seal;
- (2) To adopt bylaws for the management and regulation of its affairs;
- (3) To develop and adopt a strategic plan for carrying out its purposes under the bill;

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<sup>4</sup> R.C. 4164.07.

<sup>5</sup> R.C. 4164.31(A).

<sup>6</sup> R.C. 4164.31(B).

<sup>7</sup> R.C. 4164.05.



(4) To develop a policy regarding any interest in intellectual property that may be acquired or developed by the Consortium;

(5) To sue and be sued, to implead and be impleaded, and to complain and defend the Authority in all courts;

(6) To make and enter into all contracts and agreements necessary or incidental to the performance of its duties, the furtherance of its purposes, and the execution of its powers, including agreements with any person or federal agency;

(7) To acquire, purchase, hold, use, lease, or otherwise dispose of property, real, personal, or mixed, tangible or intangible, or any interest necessary or desirable for carrying out its purposes;

(8) To promote and facilitate agreements among Ohio's public and private institutions of higher education and other research entities to carry out research projects relating to public safety, molten-salt-research-reactor technology, and the production of industrial and medical isotopes;

(9) To foster innovative partnerships and relationships among the state, Ohio's public institutions of higher education, private companies, federal laboratories, and nonprofit organizations to accomplish its purposes;

(10) To provide advice, assistance, and services to institutions of higher education and to other persons providing services or facilities for nuclear research, medical-isotope research, or graduate education;

(11) To disseminate information and research results;

(12) To identify and support, in cooperation with the public and private sectors, the development of education programs related to Ohio's medical-isotope industry;

(13) To identify and support, in cooperation with Ohio's nuclear entities, nuclear medicine;

(14) To encourage, facilitate, and support the application, commercialization, and transfer of new medical-isotope and molten-salt-research-reactor technologies;

(15) To provide public information and communication about medical isotopes and related educational and job opportunities;

(16) To consult with the General Assembly, federal, state, and local agencies, nonprofit organizations, private industry, and other potential developers and users of



medical isotopes, nuclear technologies, nuclear waste, nuclear-energy byproducts, and special nuclear materials;

(17) To assume any regulatory powers delegated from the USNRC, the USDOE, any U.S. military branch, or similar federal agencies, departments, or programs, governing the construction and operation of noncommercial power-producing nuclear reactors and the handling of radioactive materials;

(18) To act in place of the Governor in approving agreements with the USNRC and joint-development agreements with the USDOE or an equivalent regulatory agency in the event that the Authority requests any of the following:

- (a) The USNRC to delegate rules for a state-based nuclear research-and-development program.
- (b) To jointly develop molten-salt-research-reactor technology with the USDOE under the USDOE's authority.
- (c) To jointly develop molten-salt-research-reactor technology with the U.S. Department of Defense (USDOD) or another U.S. military agency under the authority of the department or agency.<sup>8</sup>

The bill authorizes the Authority, with the Ohio Department of Health (ODH), to act for the Governor in the heretofore described circumstances, to pursue agreement state status for the assumption of specified licensing and related regulatory authority from the USNRC with respect to byproduct material, source material, the commercial disposal of low-level radioactive waste, and special nuclear material in quantities not sufficient to form a critical mass. Under current law, the ODH is the only agency authorized to pursue such an agreement. The bill permits the Authority and, under continuing law, requires ODH to enter into negotiations with the USNRC for that purpose.<sup>9</sup>

Additionally, the bill states that any rules adopted under the Radiation Control Program Law cannot conflict or supersede the rules adopted by the Authority under the bill for the purposes of (1) of developing and studying molten-salt research reactors to produce medical isotopes and reduce Ohio's nuclear waste, and (2) ensuring Ohioans' safety.<sup>10</sup>

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<sup>8</sup> R.C. 4164.19.

<sup>9</sup> R.C. 3748.03.

<sup>10</sup> R.C. 3748.23.

## **Industrial development bonds; state nuclear technology research**

The bill permits, upon the Consortium's request and the General Assembly's approval, the Authority to issue industrial development bonds, in accordance with continuing law. The Consortium must match the funds derived from the issuance of bonds.<sup>11</sup>

The bill states that the issuance of bonds is to fund investigatory research and development for the purposes described in rules the Authority must adopt as provided for by the USNRC, USDOE, USDOD, another U.S. military agency, or a comparable federal agency. The rules must provide for an Ohio state nuclear technology research program for the purposes of developing and studying molten-salt research reactors to produce medical isotopes and to reduce Ohio's high-level nuclear waste. The rules must reasonably ensure Ohioans of their safety in respect to nuclear technology research and development and radioactive materials utilized by the Consortium.<sup>12</sup>

### **Authority collaboration**

The bill requires the Authority to work with industrial and academic institutions and the USDOE or U.S. military branches to approve designs for the commercialization of advanced-nuclear-reactor components. Such components include advanced-nuclear-reactor neutronics analysis and experimentation; safety and plant safety; fuels and materials; steam supply systems and associated components and equipment; engineered safety features and associated components; building design; instrumentation and control and application of computer science; quality and inspection practices; plant design and construction; economic methodology and evaluation technology; treatment, storage, recycling, and disposal technology for spent fuel; treatment, storage, and disposal of radioactive waste; and other areas that the parties and their executive agents agree upon.<sup>13</sup>

### **Project priority**

The Authority must give priority to all Consortium projects that reduce nuclear waste and produce medical isotopes.<sup>14</sup>

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<sup>11</sup> R.C. 4164.23; R.C. Chapter 165., not in the bill.

<sup>12</sup> R.C. 4164.21.

<sup>13</sup> R.C. 4164.25.

<sup>14</sup> R.C. 4164.29.



## **Membership; meetings**

### **Appointments**

Under the bill, the Authority is to consist of nine members representing the following three stakeholder groups within the nuclear-engineering-and-manufacturing industry: (1) safety, (2) industry, and (3) engineering research and development. The Governor, the Speaker of the House of Representatives, and the President of the Senate must each appoint one member from each of the three stakeholder groups.<sup>15</sup>

The bill requires members to serve five-year terms, unless the Consortium approves terms of an alternative duration. Any appointment to fill a vacancy on the Authority is to be made for the unexpired term of the member whose death, resignation, or removal created the vacancy.<sup>16</sup>

### **Qualifications**

The bill requires members appointed from each stakeholder group to meet certain requirements. A member appointed from the safety group must hold at least a Bachelor's degree in nuclear, mechanical, chemical, or electrical engineering and at least one of the following must also apply:

(1) The member is a recognized professional in nuclear-reactor safety or developing ISO 9000 standards.

(2) The member has been employed by or has worked closely with the USDOE or USNRC and the member also has a professional background in nuclear-energy-technology development or advanced-nuclear-reactor concepts.

(3) The member has been employed by a contractor that has built concept reactors and the member also worked with hazardous substances, either nuclear or chemical, during that employment.

A member appointed from the industry group must have at least five years of experience in one or more of the following:

(1) Nuclear-power-plant operation;

(2) Processing and extracting industrial or medical isotopes;

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<sup>15</sup> R.C. 4164.09(A) and (B).

<sup>16</sup> R.C. 4164.09(E) and (F).



(3) Managing a facility that deals with hazardous substances, either nuclear or chemical;

(4) Handling and storing nuclear waste.

A member appointed from the engineering research and development group must hold at least a Bachelor's degree in nuclear, mechanical, chemical, or electrical engineering and must also be a recognized professional in at least one of the following areas of study:

(1) Advanced nuclear reactors;

(2) Materials science involving the study of alloys and metallurgy, ceramics, or composites;

(3) Molten-salt chemistry;

(4) Solid-state chemistry;

(5) Chemical physics;

(6) Actinide chemistry;

(7) Instrumentation and sensors;

(8) Control systems.

Additionally, the bill prohibits any individual from being appointed who has been a member of an antinuclear organization.<sup>17</sup>

### **Officers**

The bill requires Consortium shareholders to annually elect, from among Authority members, a chairperson, a vice-chairperson, and a treasurer. Consortium shareholders must also annually elect an Authority secretary. The secretary is not required to be an Authority member, but if the secretary is a member, the secretary is prohibited from voting. Consortium shareholders may elect additional nonvoting subordinate officers as they determine to be proper. Subordinate officers are not required to be Authority members.

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<sup>17</sup> R.C. 4164.09(C) and (D).

The bill permits, prior to the first Consortium meeting, Authority members to appoint a temporary chairperson, vice-chairperson, treasurer, and secretary.<sup>18</sup>

### **Duties**

The bill requires members to begin the performance of their duties immediately upon appointment to the Authority.<sup>19</sup>

### **Authority meetings**

The bill requires Authority meetings to be held under any of the following circumstances:

- (1) At the call of the chairperson;
- (2) At the call of any seven Authority members;
- (3) Upon the request of a majority of Consortium shareholders.

Under the bill, all Authority meetings must be open to the public, or streamed live on the Internet and made publicly available free of charge. Meetings must begin after 6:00 p.m. and conclude not later than 10:00 p.m. The Authority may meet by electronic means. If it does not, the meeting must be held at any of the following:

- (1) The Capitol Atrium;
- (2) The Vern Riffe Center for Government and the Arts in Columbus;
- (3) The State Fairgrounds;
- (4) Any Ohio State University campus.

The bill requires the Authority chairperson, or the vice-chairperson in the chairperson's absence, to preside at all meetings. In the absence of both the chairperson and vice-chairperson, the Consortium shareholders must appoint a chairperson pro tempore from Authority membership, who must preside at the meeting for which the chairperson and vice-chairperson are absent. A majority of Authority members constitute a quorum, and an act of the majority of members present at any regular or special meeting at which a quorum is present is an act of the Authority.<sup>20</sup>

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<sup>18</sup> R.C. 4164.13.

<sup>19</sup> R.C. 4164.11.

<sup>20</sup> R.C. 4164.15.



## **Annual strategic plan**

The bill requires the Authority, on or before July 4 of each year, to submit the following to the Governor and General Assembly:

- An updated strategic plan;
- An annual summary of the Authority's activities;
- Recommendations for the support and expansion of the medical-isotope industry in Ohio.<sup>21</sup>

## **Fund solicitation**

Under the bill, the Authority, in order to fund and support the Authority's and Consortium's activities, must 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;
- (3) Contributions of money, property, or other things of value, which must be held, used, and applied for the purposes specified under the bill.

The Authority must also facilitate the collaboration of the Consortium shareholders toward the attainment of grants and fund expenditures in accomplishing the purposes set forth under the bill.<sup>22</sup>

## **Authority's general counsel**

The bill designates the Attorney General or the Attorney General's designated representative as the Authority's primary general counsel. The general counsel must represent the Authority in any litigation concerning the Authority's activities with other states and the federal government.<sup>23</sup>

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<sup>21</sup> R.C. 4164.33.

<sup>22</sup> R.C. 4164.27.

<sup>23</sup> R.C. 4164.35.

## **Consortium**

### **Formation; purposes**

Within 180 days after the appointment of its initial members, the Authority is to provide for the formation of a for-profit entity to be known as the Ohio Medical-Isotope Economic Development Consortium (Consortium). The Consortium is to serve for the benefit of Ohio residents and for Consortium investors. Its purposes include carrying out the mission of the Authority in:

(1) Making Ohio a leader in the commercial production of industrial, research, and medical isotopes, and in nuclear waste reduction and storage with respect to nuclear waste produced by nuclear reactors;

(2) Serving as an interdisciplinary study, research, and information resource for Ohio, the USNRC, USDOE, and USDOD on industrial isotopes and medical isotopes;

(3) Raising money on behalf of the Authority in the corporate and nonprofit community and from other nonstate sources to fund research that will lay the basis for regulating radioactive materials and nuclear technologies delegated to the Authority.

The bill states that the Consortium is to be solely responsible for the internment and sequestration of high level nuclear waste, or its destruction or reduction, that is produced in Ohio if the federal government defaults on its obligation to dispose of or store Ohio produced high-level nuclear waste. It is permitted to seek funds of the USDOE to develop alternative technologies to store, reduce, or consume Ohio's high level nuclear waste. The bill grants the Consortium legal standing to represent Ohio if the USDOE fails in its obligation to provide a viable repository for the state's high-level nuclear waste. Additionally, it may seek to reduce that waste through technologies that consume the waste and produce medical isotopes, district heating, electrical generation, plasma gasification or other similar type process, or the desalinization of water economically enough to fund the long-term sequestration of the waste.

The bill authorizes the Consortium to commit to research and development agreements with other state organizations that are authorized to enter into such agreements, though it cannot obligate the state to these agreements. It must semiannually report to the Authority on its nonproprietary activities.<sup>24</sup>

Finally, the Consortium is required to pay the administrative expenses of the Authority. Those expenses cannot exceed 5% of the shareholders' equity in the

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<sup>24</sup> R.C. 4164.41.

Consortium each year. It also is to compensate the Attorney General for services provided as the primary general counsel for the Authority.<sup>25</sup>

### **Stock; shareholders**

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, each purchaser of the stock is to be charged a monthly fee.<sup>26</sup>

Any of the following may become Consortium shareholders:

(1) Public or private institutions of higher education in Ohio that purchase shares or offer in-kind contributions and services accepted in lieu of payment;

(2) Out-of-state educational institutions that are American owned or controlled and approved by the Authority to purchase shares;

(3) Ohio-based federal research laboratories that purchase shares or offer in-kind contributions and services accepted in lieu of payment;

(4) Nuclear energy or medical isotope-related American nonprofit organizations that purchase shares or offer in-kind contributions and services accepted in lieu of payment;

(5) American business entities with operating facilities located in Ohio;

(6) Out-of-state American business entities approved by the Authority to purchase shares;

(7) American residents and individuals owning property in Ohio, provided they file an Ohio income tax return, hold a valid Ohio driver's license, or pay property tax to an Ohio municipality;

(8) Any other individual or entity approved by the Authority and the Board of Directors of the Consortium pursuant to a process established by the Consortium's bylaws.

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<sup>25</sup> R.C. 4164.43.

<sup>26</sup> R.C. 4164.45.



The bill establishes the following purchase requirements:

--If the purchaser is an Ohio resident who pays Ohio income tax or a business entity organized under Ohio law, no minimum purchase of shares is required.

--If the purchaser is an out-of-state resident, the minimum purchase is 100 shares.

--If the purchaser is a business entity organized under the laws of another state, the minimum purchase is 1,000 shares.

A foreign national, foreign company, or foreign country cannot own more than 33% shares of stock that entitle the holder to vote, but they may own an unlimited amount of preferred stock that does not allow the holder to vote.<sup>27</sup>

### **Shareholder meetings**

The Authority may preside over the first organizational meeting of the shareholders, which must be held as early as 540 days after the formation of the Consortium, or within 180 days after the sale of one million shares of the original offering of stock, whichever comes first. Thereafter, the annual meeting of the shareholders for the election of directors and the transaction of other business is to be held on the date in each year determined by the Board of Directors, which date cannot be later than 180 days after the anniversary of the date of the first organizational meeting. Special meetings of the shareholders may be called by the Board, the chairperson of the Authority or the president, and must be called by the Board upon the written request of the holders of record of a majority of the outstanding shares that are entitled to vote at the meeting requested to be called.<sup>28</sup>

The bill sets forth requirements relating to the location of shareholder meetings, the content and delivery of meeting notices, the appointment of independent inspectors to act at the meetings, what constitutes a quorum, the appointment of proxies, and the election of directors.<sup>29</sup> A certified list of shareholders as of the record date must be produced at, or prior to, any meeting of the shareholders, on shareholder request. Each shareholder of record is entitled to one vote for every share standing in the shareholder's name on the record of shareholders. The bill prohibits any shareholder

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<sup>27</sup> R.C. 4164.46.

<sup>28</sup> R.C. 4164.17, 4164.48, and 4164.49.

<sup>29</sup> R.C. 4164.50, 4164.51, 4164.52, 4164.54, 4164.60, 4164.61, 4164.63, and 4164.64.



from transferring the shareholder's vote, or issuing a proxy to vote, to any person for any sum of money or any other thing of value except as permitted by law.<sup>30</sup>

### **Board of directors; officers; committees**

The Consortium is to be managed by a board of directors. Directors must be at least 18 years old, an Ohio resident, and an American citizen. The number of directors constituting the entire board of directors is to be the number, not less than one or more than 20, that is fixed from time to time by a majority of the total number of directors that the Consortium would have, prior to any increase or decrease, if there were no vacancies. Until otherwise fixed by the directors, the number of directors constituting the entire board is to be four.

Directors must be elected at each annual meeting of shareholders to hold office until the next annual meeting and until their successors have been elected and qualified or until their death, resignation, or removal in the manner provided by the bill. The bill specifies when and where the board is to meet, how meeting notices are to be provided, what constitutes a quorum for the transaction of business, and other procedural requirements.<sup>31</sup> It also provides that the board is to determine the compensation of directors for services in any capacity.<sup>32</sup>

With respect to officers, the board is required to elect a president, secretary, and treasurer. It may also elect one or more vice presidents, assistant secretaries, assistant treasurers, and any other officers it so chooses. Any two or more offices may be held by the same person. The bill prescribes the specific duties and responsibilities of the president, secretary, and treasurer of the board and who is to perform the duties of an officer in that officer's absence. The board is to set the salaries of all officers and agents of the Consortium.<sup>33</sup>

The board also may, by resolution adopted by a majority of the entire board, designate from among its members an executive committee and any other committees, each consisting of at least three directors. To the extent provided in the resolution, the committees have all the authority of the board, except with respect to (1) the submission to shareholders of any action that requires shareholders' approval, (2) the filling of vacancies in the board or in any committee, (3) the fixing of compensation of the directors for serving on the board or on any committee, (4) the amendment or repeal of

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<sup>30</sup> R.C. 4164.56, 4164.58, and 4164.59.

<sup>31</sup> R.C. 4164.70 to 4164.74.

<sup>32</sup> R.C. 4164.76.

<sup>33</sup> R.C. 4164.80 to 4164.84.



the bylaws or the adoption of new bylaws, (5) the amendment or repeal of any resolution of the board that, by its terms, is not so amendable or repealable, and (6) the removal or indemnification of directors.<sup>34</sup>

### **Interest of directors in a transaction**

*Unless shown to be unfair and unreasonable as to the Consortium*, a contract or other transaction between the Consortium and one or more of its directors, or between the Consortium and any other consortium, firm, or other entity in which one or more of the directors are directors or officers or are financially interested, is *not* void or voidable – irrespective of whether the interested director or directors are present at a meeting of the board, or of a committee of the board, that authorizes the contract or transaction and irrespective of whether the votes of the interested director or directors are counted for that purpose. In the absence of fraud, such a contract or transaction conclusively may be authorized or approved as fair and reasonable by:

--The board or a duly empowered committee of the board, by a vote sufficient for the purpose without counting the vote or votes of the interested director or directors, though the interested director or directors may be counted in determining the presence of a quorum at the meeting that authorizes the contract or transaction, if the fact of the common directorship, officership, or financial interest is disclosed or known to the board or committee, as applicable; *or*

--The shareholders entitled to vote for the election of directors, if the common directorship, officership, or financial interest is disclosed or known to those shareholders.

Despite the above, no loan, except advances in connection with indemnification, can be made by the Consortium to any director unless it is authorized by vote of the shareholders without counting any shares of the director who would be the borrower or unless the director who would be the borrower is the sole shareholder of the Consortium.<sup>35</sup>

## **Business of the Consortium**

### **Organizational agent**

The bill specifies that, immediately after the Consortium's organization and before its first organizational meeting, the nonprofit eGeneration Foundation, or its successive entity, is to act as the sole agent to encourage investment into the

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<sup>34</sup> R.C. 4164.75.

<sup>35</sup> R.C. 4164.78.

Consortium, to educate the public of the importance of medical isotopes, and to lobby the federal government, as the Authority approves. The eGeneration Foundation is permitted to expend Consortium-derived funds, at its discretion and with the approval of the Authority, of up to one million dollars annually, provided the Foundation remains a nonprofit organization and pays no more than one manager \$110,000 or less annually and no other employees more than \$70,000 annually. The Authority, at its discretion, may approve more discretionary spending for the Foundation prior to the first organizational meeting of the Consortium.<sup>36</sup>

### **Fiscal year; budget**

The fiscal year of the Consortium is the 12 months ending December 31 or any other period fixed by the board.<sup>37</sup> After its first meeting, the Consortium is to determine its annual budget.<sup>38</sup>

### **Recordkeeping; finances**

The Consortium must maintain a current list of the directors and officers and their residence addresses, and keep correct and complete books and records of account utilizing [Ohiocheckbook.com](http://Ohiocheckbook.com). Minutes of the proceedings of the shareholders, board of directors, and any committees of directors are to be posted on the Consortium website. The bill also requires the Treasurer of State to maintain a record containing the names and addresses of all shareholders, the number and class of shares held by each, and the dates when they respectively became the owners of record of the shares.<sup>39</sup>

The bill authorizes the Authority to determine whether, and to what extent, and at what times, places, and under what conditions, the accounts, books, records, or other documents of the Consortium not already made public are to be open to inspection. However, no creditor, security holder, or other person has any right to inspect any of those documents except as conferred by law or as so authorized by the Authority.<sup>40</sup>

Further, the bill provides that all checks and drafts on, and withdrawals from, the Consortium's accounts with financial institutions, and all bills of exchange, notes, and other instruments for the payment of money, that are drawn, made, endorsed, or

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<sup>36</sup> R.C. 4164.66(A) and (B).

<sup>37</sup> R.C. 4164.88.

<sup>38</sup> R.C. 4164.66(C).

<sup>39</sup> R.C. 4164.86(A) and (B).

<sup>40</sup> R.C. 4164.86(C).

accepted by the Consortium, must be signed on its behalf by the person or persons authorized by, or pursuant to a resolution of, the board.<sup>41</sup>

### **Audits**

The Auditor of State or the Auditor's legally authorized representatives is required to annually audit the financial accounts of the Consortium, provided that the working papers and files of the Auditor relating to the audits are not public records.<sup>42</sup>

### **Power-producing nuclear reactors**

The bill authorizes the Consortium, with the consent of a majority of its shareholders and the USDOE, USNRC, or U.S. military, to build one or more demonstration power-producing nuclear reactors located in Ohio. The reactors cannot, however, transmit electricity or district heat outside Ohio.<sup>43</sup> The bill prohibits both the Authority and Consortium from operating a power-producing reactor or research reactor outside Ohio.<sup>44</sup>

### **Tax credits for consortium investments**

The bill authorizes tax credits for persons that purchase stock in the Consortium from its initial offering (see "**Stock; shareholders**," above). The shareholder applies to the Director of Development Services to receive a certificate authorizing the purchaser to claim the credit.<sup>45</sup> However, the Director may only issue these tax credit certificates if the General Assembly, through subsequent legislation, establishes an annual cap on the amount of credits above which the Director may not issue additional certificates.<sup>46</sup>

The credit may be claimed against a variety of taxes, i.e., the commercial activity tax, personal income tax, financial institutions tax, insurance premiums tax, petroleum activity tax, and public utility excise taxes. It may be claimed beginning in the annual tax period the certificate is issued or for any of the 15 following annual tax periods.

The amount of the credit is based on a percentage of the Consortium stock's purchase price. If the credit is claimed in the annual tax period in which the certificate is

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<sup>41</sup> R.C. 4164.87.

<sup>42</sup> R.C. 4164.91.

<sup>43</sup> R.C. 4164.68.

<sup>44</sup> R.C. 4164.93.

<sup>45</sup> R.C. 122.97(B).

<sup>46</sup> R.C. 122.97(D).

issued, the credit amounts to 25% of this purchase price, but the amount of credit increases if the shareholder defers claiming the credit by 5% for each annual tax period that elapses. Ultimately the credit must be claimed for the earlier of the 15th annual tax period after the certificate's issuance, at which time the credit equals 100% of the purchase price, or the annual tax period during which the Consortium dissolves, terminates, or declares bankruptcy. The credit is nonrefundable, but any unclaimed balance may be carried forward for fifteen years.<sup>47</sup>

### **Credit transfer**

A person that holds a tax credit certificate may transfer the certificate and, thus, 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 the Director of Development Services.<sup>48</sup>

### **Miscellaneous**

The bill states that it is not to be construed as superseding any agreement between ODH and the USNRC that has been entered into under current law with respect to regulating activities not within the scope of activities of the Authority.<sup>49</sup>

It also provides that no officer or employee of the state of Ohio can forfeit the officer's or employee's office or employment due to acceptance of membership on the Authority or by providing service to the Authority or the Consortium.<sup>50</sup>

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## **COMMENT**

As explained above, the bill creates the Ohio Medical-Isotope Economic Development Authority, which is authorized to form the *for-profit* Ohio Medical-Isotope Economic Development Consortium. The bill grants the Consortium certain duties and authority. It requires the Treasurer of State's office to provide equity management services for the Consortium and to establish an online exchange to purchase, sell, and trade Consortium stock. It also requires the Auditor of State to annually audit the private financial accounts of the Consortium.

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<sup>47</sup> R.C. 122.97(C), 5725.98, 5726.98, 5729.98, 5747.02, 5747.98, and 5751.98.

<sup>48</sup> R.C. 122.97(E).

<sup>49</sup> R.C. 3748.03 and 4164.95.

<sup>50</sup> R.C. 4164.97.



The Ohio Constitution prohibits the General Assembly from passing a special act conferring corporate powers.<sup>51</sup> Relevantly, a plaintiff wishing to challenge a law on this ground may have difficulty showing standing to bring an action.<sup>52</sup>

Also as noted above, the bill permits the Authority to introduce legislation and requires the General Assembly to vote on the legislation within 30 days of introduction. However, the Ohio Constitution, which generally vests legislative authority with the General Assembly, allows the people to propose laws to the General Assembly only by filing a petition with the Secretary of State. The petition must be signed by 3% of the electors.<sup>53</sup>

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## HISTORY

ACTION	DATE
Introduced	11-14-18

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<sup>51</sup> Article XIII, § 1.

<sup>52</sup> See *ProgressOhio.org, Inc. v. JobsOhio*, 139 Ohio St.3d 520 (2014).

<sup>53</sup> Article II, §§ 1 and 1b.

