

Clean Ohio Revitalization Fund

122.65 Brownfield revitalization project definitions.

As used in sections 122.65 to 122.659 of the Revised Code:

(A) "Applicable cleanup standards" means either of the following:

(1) For property to which Chapter 3734. of the Revised Code and rules adopted under it apply, the requirements for closure or corrective action established in rules adopted under section 3734.12 of the Revised Code;

(2) For property to which Chapter 3746. of the Revised Code and rules adopted under it apply, the cleanup standards that are established in rules adopted under section 3746.04 of the Revised Code.

(B) "Applicant" means a county, township, municipal corporation, port authority, or conservancy district or a park district, other similar park authority, nonprofit organization, or organization for profit that has entered into an agreement with a county, township, municipal corporation, port authority, or conservancy district to work in conjunction with that county, township, municipal corporation, port authority, or conservancy district for the purposes of sections 122.65 to 122.658 of the Revised Code.

(C) "Assessment" means a phase I and phase II property assessment conducted in accordance with section 3746.04 of the Revised Code and rules adopted under that section.

(D) "Brownfield" means an abandoned, idled, or under-used industrial, commercial, or institutional property where expansion or redevelopment is complicated by known or potential releases of hazardous substances or petroleum.

(E) "Certified professional," "hazardous substance," "petroleum," and "release" have the same meanings as in section 3746.01 of the Revised Code.

(F) "Cleanup or remediation" means any action to contain, remove, or dispose of hazardous substances or petroleum at a brownfield. "Cleanup or remediation" includes the acquisition of a brownfield, demolition performed at a brownfield, and the installation or upgrade of the minimum amount of infrastructure that is necessary to make a brownfield operational for economic development activity.

(G) "Distressed area" means either a municipal corporation with a population of at least fifty thousand or a county that meets any two of the following criteria:

(1) Its average rate of unemployment, during the most recent five-year period for which data are available, is equal to at least one hundred twenty-five per cent of the average rate of unemployment for the United States for the same period.

(2) It has a per capita income equal to or below eighty per cent of the median county per capita income of the United States as determined by the most recently available figures from the United States census bureau.

(3)(a) In the case of a municipal corporation, at least twenty per cent of the residents have a total income for the most recent census year that is below the official poverty line.

(b) In the case of a county, in intercensal years, the county has a ratio of transfer payment income to total county income equal to or greater than twenty-five per cent.

"Distressed area" includes a municipal corporation the majority of the population of which is situated in a county that is a distressed area.

(H) "Eligible area" means a distressed area, an inner city area, a labor surplus area, or a situational distress area.

(I) "Inner city area" means an area in a municipal corporation that has a population of at least one hundred thousand, is not a labor surplus area, and is a targeted investment area established by the municipal corporation that is comprised of block tracts identified in the most recently available figures from the United States census bureau in which at least twenty per cent of the population in the area is at or below the official poverty line or of contiguous block tracts meeting those criteria.

(J) "Institutional property" means property currently or formerly owned or controlled by the state that is or was used for a public or charitable purpose. However, "institutional property" does not mean property that is or was used for educational purposes.

(K) "Integrating committee" means a district public works integrating committee established under section [164.04](#) of the Revised Code.

(L) "Labor surplus area" means an area designated as a labor surplus area by the United States department of labor.

(M) "Loan" includes credit enhancement.

(N) "No further action letter" means a letter that is prepared by a certified professional when, on the basis of the best knowledge, information, and belief of the certified professional, the certified professional concludes that the cleanup or remediation of a brownfield meets the applicable cleanup standards and that contains all of the information specified in rules adopted under division (B)(7) of section [3746.04](#) of the Revised Code.

(O) "Nonprofit organization" means a corporation, association, group, institution, society, or other organization that is exempt from federal income taxation under section 501(c)(3) of the "Internal Revenue Code of 1986," 100 Stat. 2085, 26 U.S.C. 501(c)(3), as amended.

(P) "Property" means any parcel of real property, or portion of such a parcel, and any improvements to it.

(Q) "Public health project" means the cleanup or remediation of a release or threatened release of hazardous substances or petroleum at a property where little or no economic redevelopment potential exists.

(R) "Official poverty line" has the same meaning as in section [3923.51](#) of the Revised Code.

(S) "Situational distress area" means a county or a municipal corporation that has experienced or is experiencing a closing or downsizing of a major employer that will adversely affect the county or municipal corporation's economy and that has applied to the director of development to be designated as a situational distress area for not more than thirty months by demonstrating all of the following:

(1) The number of jobs lost by the closing or downsizing;

(2) The impact that the job loss has on the county or municipal corporation's unemployment rate as measured by the director of job and family services;

(3) The annual payroll associated with the job loss;

(4) The amount of state and local taxes associated with the job loss;

(5) The impact that the closing or downsizing has on suppliers located in the county or municipal corporation.

Effective Date: 07-26-2001; 06-09-2004.

122.651 Clean Ohio council.

(A) There is hereby created the clean Ohio council consisting of the director of development or the director's designee, the director of environmental protection or the director's designee, the lieutenant governor or the lieutenant governor's designee, the director of the Ohio public works commission as a nonvoting, ex officio member, one member of the majority party of the senate and one member of the minority party of the senate to be appointed by the president of the senate, one member of the majority party of the house of representatives and one member of the minority party of the house of representatives to be appointed by the speaker of the house of representatives, and seven members to be appointed by the governor with the advice and consent of the senate. Of the members appointed by the governor, one shall represent the interests of counties, one shall represent the interests of townships, one shall represent the interests of municipal corporations, two shall represent the interests of business and development, and two shall represent statewide environmental advocacy organizations. The members appointed by the governor shall reflect the demographic and economic diversity of the population of the state. Additionally, the governor's appointments shall represent all areas of the state. All appointments to the council shall be made not later than one hundred twenty days after July 26, 2001.

(B) The members appointed by the president of the senate and speaker of the house of representatives shall serve at the pleasure of their appointing authorities. Of the initial members appointed by the governor to the clean Ohio council, four shall be appointed for two years and three shall be appointed for one year. Thereafter, terms of office for members appointed by the governor shall be for two years, with each term ending on the same day of the same month as did the term that it succeeds. Each of those members shall hold office from the date of appointment until the end of the term for which the member is appointed.

Members may be reappointed. Vacancies shall be filled in the same manner as provided for original appointments. Any member appointed to fill a vacancy occurring prior to the expiration date of the term for which the member was appointed shall hold office for the remainder of that term. A member shall continue in office after the expiration date of the member's term until the member's successor takes office or until a period of sixty days has elapsed, whichever occurs first. The governor may remove a member appointed by the governor for misfeasance, nonfeasance, or malfeasance in office.

(C) The governor shall appoint a member of the clean Ohio council to serve as the chairperson of the council. The director of development shall serve as the vice-chairperson of the council unless appointed chairperson. If the director is appointed chairperson, the council annually shall select from among its members a vice-chairperson to serve while the director is chairperson. The council annually shall select from among its members a secretary to keep a record of its proceedings. A majority vote of a quorum of the members of the council is necessary to take action on any matter. The council may adopt bylaws governing its operation, including bylaws that establish the frequency of meetings, procedures for reviewing eligible projects under sections [122.65](#) to [122.658](#) of the Revised Code and policies and requirements established under section [122.657](#) of the Revised Code, and other necessary procedures.

(D) Members of the clean Ohio council shall be deemed to be public officials or officers only for the purposes of section [9.86](#) and Chapters 102. and 2921. of the Revised Code. Serving as a member of the clean Ohio council does not constitute holding a public office or position of employment so as to constitute grounds for removal of public officers or employees serving as members of the council from their offices or positions of employment. Members of the council shall file with the Ohio ethics commission the disclosure statement described in division (A) of section [102.02](#) of the Revised Code on the form prescribed by the commission and be subject to divisions (C) and (D) of that section. Members of the council shall serve without compensation for attending council meetings, but shall receive their actual 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.

(E) Members appointed by the governor to represent the interests of counties, townships, and municipal corporations do not have a conflict of interest by virtue of their service in the position. For the purposes of this division, "conflict of interest" means the taking of any action as a member of the council that affects a public agency the person serves as an officer or employee.

(F) The department of development shall provide office space for the council. The council shall be assisted in its duties by the staff of the department of development and the environmental protection agency.

(G) Sections [101.82](#) to [101.87](#) of the Revised Code do not apply to the clean Ohio council.

Effective Date: 09-26-2003.

122.6510 Brownfields Revolving Loan Fund.

(A) As used in this section, "federal act" means the "Small Business Liability Relief and Brownfields Revitalization Act," 115 Stat. 2356 (2002), 42 U.S.C. 9601 and 9604.

(B) There is hereby created in the state treasury the Brownfields Revolving Loan Fund. The Fund shall consist of all moneys received by the state from repayments of loans made under the terms of the federal act, and any other money transferred to the Fund. The Fund may be used to make grants and loans by the Director of Development Services. All investment earnings of the Fund shall be credited to the Fund.

(C) The Director shall administer moneys received into the Fund and comply with all requirements imposed by the federal act in administering the funds .

(D) The Director may establish a schedule of fees and charges payable by loan recipients to the Director for the administration of this section.

Amended by 132nd General Assembly File No. TBD, HB 292, §1, eff. 9/13/2018.

Added by 129th General Assembly File No.129, SB 314, §6, eff. 9/28/2012.

122.652 Grant or loan for a brownfield cleanup or remediation project.

(A)(1) An applicant seeking a grant or loan for a brownfield cleanup or remediation project from the clean Ohio revitalization fund created in section [122.658](#) of the Revised Code shall request an application form from the appropriate integrating committee with geographical jurisdiction over the project for which a grant or loan is sought. The applicant shall complete the application and include all of the information required by sections [122.65](#) to [122.658](#) of the Revised Code and policies and requirements established under section [122.657](#) of the Revised Code.

(2) In addition to the information that is required to be included in the application under division (A)(1) of this section, an applicant shall include an affidavit signed by the authorized representative of the applicant certifying that the applicant did not cause or contribute to the release of hazardous substances or petroleum at the brownfield that is the subject of the application.

No person shall submit a false affidavit under division (A)(2) of this section.

(3) After completion of the application, but prior to the submission of the application to the integrating committee under division (B) of this section, the applicant shall conduct a public meeting concerning the application and the proposed cleanup or remediation. Not later than forty-five days prior to conducting the public meeting, the applicant shall provide notice of the date, time, and location of the public meeting in a newspaper of general circulation in the county in which the property that is the subject of the application is located. In addition, not later than forty-five days prior to the hearing, the applicant shall post notice of the date, time, and location of the public meeting at the property on a sign that measures not less than four feet by four feet or, if the political subdivision in which the sign is to be posted prohibits a sign of that size, the maximum size of sign permitted by that political subdivision.

In addition, not later than forty-five days prior to the public meeting, the applicant shall provide a copy of the application to a public library in the vicinity of the property for public review. The submission of the application and the location of the public library shall be included in the notice required under this division. The general public may submit comments to the applicant concerning the application prior to and at the public meeting.

(B) An applicant shall submit a completed application, all required information, and an application summary to the appropriate integrating committee. Based on a review of the application summaries submitted to it, an integrating committee or, if required under division (C) of this section, the executive committee of the integrating

committee shall prioritize all applications in accordance with criteria and procedures established pursuant to section [122.657](#) of the Revised Code. The integrating committee shall choose not more than six applications annually that it determines merit funding and shall forward those applications and all accompanying information to the clean Ohio council. In prioritizing and choosing applications under this division, an integrating committee or, if required under division (C) of this section, the executive committee of the integrating committee shall consult with local and regional economic development agencies or resources, community development agencies or organizations, local business organizations, and other appropriate entities located or operating in the geographic jurisdiction of the integrating committee.

Notwithstanding this division or division (C) of this section, if an integrating committee receives only one application in any given year, the chair of the integrating committee or, if required under division (C) of this section, the chair of the executive committee of the integrating committee may forward that application to the clean Ohio council as the district's top priority project for that year without a vote of the full integrating committee or executive committee, as applicable. However, the chair of the integrating committee or chair of the executive committee, as applicable, shall provide written notice of the chair's intent to forward the application to each member of the integrating committee or executive committee, as applicable, not later than fifteen days prior to forwarding the application.

(C) For purposes of division (B) of this section, all decisions of an integrating committee that is required to be organized in accordance with division (A)(5) or (6) of section [164.04](#) of the Revised Code shall be approved by its executive committee that is required to be established under division (A)(7) or (8) of that section. The affirmative vote of at least seven members of an executive committee established under division (A)(7) of section [164.04](#) of the Revised Code, or of at least nine members of an executive committee established under division (A)(8) of that section, is required for any action taken by an executive committee for purposes of division (B) of this section. A decision of an executive committee may be rejected by a vote of at least two-thirds of the full membership of the applicable integrating committee not later than thirty days after the executive committee action. If an executive committee is required under this division to prioritize applications under division (B) of this section, only applications that are approved by the executive committee may be submitted to the clean Ohio council for purposes of sections [122.65](#) to [122.659](#) of the Revised Code.

(D) The clean Ohio council shall supply application forms to each integrating committee.

Effective Date: 07-26-2001; 2007 HB119 09-29-2007.

122.653 Application approval.

(A) Upon receipt of an application from an integrating committee, the clean Ohio council shall examine the application and all accompanying information to determine if the application is complete. If the council determines that the application is not complete, the council immediately shall notify the applicant that the application is not complete, provide a description of the information that is missing from the application, and return the application and all accompanying information to the applicant. The applicant may resubmit the application directly to the council.

(B) The council shall approve or disapprove in writing applications submitted to it by integrating committees or executive committees of integrating committees for grants or loans from the clean Ohio revitalization fund. The council shall not approve a project that fails to comply with the requirements established in sections [122.65](#) to [122.658](#) of the Revised Code and policies and requirements established under section [122.657](#) of the Revised Code. The council also shall not approve a project if the applicant caused or contributed to the contamination at the property. In approving or disapproving applications, the council shall use the selection process established in policies and requirements established under section [122.657](#) of the Revised Code.

(C) If the council approves an application under this section, the council shall enter into an agreement with the applicant to award a grant or make a loan for the applicant's brownfield cleanup or remediation project. The agreement shall be executed prior to the payment or disbursement of any funds approved by the council under this section. The agreement shall contain, at a minimum, all of the following:

- (1) The designation of a single officer or employee of the applicant who will serve as project manager;
- (2) Procedures for the payment or disbursement of funds from the grant or loan to the applicant;
- (3) A designation of the percentage of the estimated total cost of the project for which the grant or loan will provide funding, which shall not exceed seventy-five per cent of that cost as provided in section [122.658](#) of the Revised Code;
- (4) A description of the manner by which the applicant will provide the remainder of the estimated total cost of the project, which shall equal at least twenty-five per cent of that cost as provided in section [122.658](#) of the Revised Code;
- (5) An assurance that the applicant will clean up or remediate the brownfield to the applicable cleanup standards;
- (6) A provision for the reimbursement of grant moneys or immediate repayment of the loan, as applicable, if the completed project does not comply with the applicable cleanup standards;
- (7) Any other provisions that the council considers necessary in order to ensure that the project's implementation will comply with the requirements established in sections [122.65](#) to [122.658](#) of the Revised Code and policies and requirements established under section [122.657](#) of the Revised Code.

(D) If the council executes an agreement under this section, the council shall forward a copy of the agreement to the department of development for the purposes of section [122.658](#) of the Revised Code.

(E) A grant may be awarded or a loan may be made for a project under this section to an applicant to pay the costs of cleanup or remediation of a brownfield in order to comply with applicable cleanup standards.

Effective Date: 07-26-2001.

122.654 Determining compliance with applicable cleanup standards.

(A) Except as provided in division (G) of this section, an applicant who has entered into an agreement with the clean Ohio council under section [122.653](#) of the Revised Code shall employ a certified professional to determine if the brownfield cleanup or remediation project complies with applicable cleanup standards. The certified professional shall make this determination in accordance with Chapter 3746. of the Revised Code and rules adopted under it. If the certified professional determines that the cleanup or remediation complies with the applicable cleanup standards, the certified professional shall prepare a no further action letter.

Upon completion of a no further action letter, the certified professional shall send a copy of the letter to the applicant. The letter shall be accompanied by both of the following:

(1) A written request that the applicant notify the certified professional as to whether the applicant wishes to submit the no further action letter to the director of environmental protection;

(2) A written notice informing the applicant that the original no further action letter may be submitted to the director only by a certified professional and that the person may receive a covenant not to sue under Chapter 3746. of the Revised Code and rules adopted under it in connection with the cleanup or remediation only if the no further action letter is submitted to the director on the applicant's behalf by the certified professional.

In addition, the certified professional shall send a copy of the no further action letter to the clean Ohio council and to the director.

Promptly after receipt of the letter, request, and notice, the applicant shall send written notice to the certified professional informing the certified professional as to whether the applicant wishes to submit the no further action letter to the director and shall send a copy of the notice to the clean Ohio council. If the applicant's notice indicates that the applicant wishes to have the no further action letter submitted to the director, promptly after receipt of the notice, the certified professional shall submit the original no further action letter to the director by certified mail on behalf of the applicant. In addition, the certified professional shall send written notice to the clean Ohio council informing the council that the original no further action letter has been submitted to the director. If the applicant notifies the certified professional that the applicant does not wish to submit the no further action letter to the director, the certified professional shall send the original no further action letter to the applicant promptly after receiving the notice.

(B) If the certified professional determines that the cleanup or remediation does not comply with applicable cleanup standards, the certified professional shall send to the applicant and the clean Ohio council written notice of that fact and of the certified professional's inability to issue a no further action letter for the property.

(C) If the director receives a copy of a no further action letter from a certified professional, the director shall review the letter and determine if the cleanup or remediation complies with applicable cleanup standards. The director shall prepare a written report of the director's determination and send a copy of the report to the clean Ohio council.

(D) If the director receives an original no further action letter from a certified professional on behalf of an applicant, the director shall issue or deny a covenant not to sue under Chapter 3746. of the Revised Code and rules adopted under it except as otherwise specifically provided in sections [122.65](#) to [122.659](#) of the Revised Code.

(E) A certified professional shall maintain all documents and data prepared or acquired by the certified professional in connection with a cleanup or remediation for not less than ten years after the date of issuance of a no further action letter or after the notice required under division (B) of this section has been sent, whichever is applicable. The clean Ohio council and the director may request a certified professional to provide the council and the director with documents and data for purposes of sections [122.65](#) to [122.659](#) of the Revised Code.

No certified professional shall fail to comply with this division or a request made under it.

(F) The clean Ohio council and the director may request an applicant to provide the council or the director with documents and data for purposes of sections [122.65](#) to [122.659](#) of the Revised Code. No applicant shall fail to comply with a request made by the council or the director under this division.

(G) For purposes of sections [122.65](#) to [122.659](#) of the Revised Code, Chapter 3746. of the Revised Code and rules adopted under it apply except as otherwise specifically provided under those sections.

(H) For cleanup or remediation of a brownfield that is subject to closure or corrective action requirements established in rules adopted under section [3734.12](#) of the Revised Code, an applicant who has entered into an agreement with the clean Ohio council under section [122.653](#) of the Revised Code shall send to the director documentation that demonstrates that the cleanup or remediation complies with the applicable cleanup standards. The director shall review the documentation and determine if the cleanup or remediation complies with the applicable cleanup standards. For purposes of the cleanup or remediation, the applicant also shall obtain any necessary review or approval from the director. The director shall prepare a written report of the director's determination and send a copy of the report to the clean Ohio council.

Effective Date: 07-26-2001.

122.655 No further action letters.

(A) A no further action letter issued under section [122.654](#) of the Revised Code, a covenant not to sue issued under Chapter 3746. of the Revised Code and rules adopted under it, if applicable, and any restrictions on the use of the property that are needed in order to comply with the applicable cleanup standards shall be filed by the applicant in the office of the county recorder of the county in which the property is located and shall be recorded in the same manner as a deed to the property.

No applicant shall fail to comply with this division.

(B) Pursuant to Chapter 5309. of the Revised Code, a no further action letter issued under section [122.654](#) of the Revised Code, a covenant not to sue issued under Chapter 3746. of the Revised Code and rules adopted under it, if applicable, and any restrictions on the use of the property, as described in division (A) of this section, in connection with registered land, as defined in section [5309.01](#) of the Revised Code, shall be entered as a memorial on the page of the register where the title of the owner is registered.

Effective Date: 07-26-2001.

122.656 Grant to pay cost of assessment for cleanup or remediation of brownfield, or public health project.

(A)(1) An applicant may submit an application for property that is located in an eligible area on a form prescribed by the director of development to request a grant from the clean Ohio revitalization fund to pay for the cost of an assessment that is required for purposes of sections [122.65](#) to [122.658](#) of the Revised Code, the cleanup or remediation of a brownfield, or public health projects. The director shall not make loans from the clean Ohio revitalization fund for purposes of this section.

(2) The authorized representative of an applicant shall sign and submit an affidavit with the application certifying that the applicant did not cause or contribute to the release of hazardous substances or petroleum on the property that is the subject of the application.

No person shall submit a false affidavit under division (A)(2) of this section.

(3) After completion of the application, but prior to the submission of the application to the director, the applicant shall comply with the public notice and public meeting requirements established under division (A)(3) of section [122.652](#) of the Revised Code.

(B) Upon receipt of an application, the director shall examine the application and all accompanying information to determine if the application is complete. If the director determines that the application is not complete, the director immediately shall notify the applicant that the application is not complete, provide a description of the information that is missing from the application, and return the application and all accompanying information to the applicant. The applicant may resubmit the application.

(C) The director shall approve or disapprove in writing applications submitted for grants from the clean Ohio revitalization fund under this section. The director shall not approve an application that fails to comply with the policies and requirements established under section [122.657](#) of the Revised Code and under this section. The director also shall not approve an application if the applicant caused or contributed to the release of hazardous substances or petroleum at the property. In approving or disapproving applications, the director shall use the criteria established pursuant to section [122.657](#) of the Revised Code. Prior to the approval or disapproval of an application under this section, the director shall notify the clean Ohio council of the pending approval or disapproval.

(D) If the director approves an application under this section, the director shall enter into an agreement with the applicant to award a grant to the applicant. The agreement shall be executed prior to the payment or disbursement of any funds approved by the director under this section.

(E) If the director executes an agreement under this section, the director shall forward a copy of the agreement to the clean Ohio council for the purposes of sections [122.65](#) to [122.658](#) of the Revised Code.

(F) For purposes of this section, an applicant shall conduct, or cause to be conducted, an assessment, a cleanup or remediation of a brownfield, or a public health project in accordance with all applicable cleanup standards and environmental statutes and rules.

Effective Date: 07-26-2001.

122.657 Establishing policies and requirements.

For the purposes of sections 122.65 to 122.658 of the Revised Code, the director of development shall establish policies and requirements regarding all of the following:

(A) The form and content of applications for grants or loans from the clean Ohio revitalization fund under section 122.652 of the Revised Code. The policies and requirements shall require that each application include, at a minimum, all of the following:

- (1) The name, address, and telephone number of the applicant;
- (2) The legal description of the property for which the grant or loan is requested;
- (3) A summary description of the hazardous substances or petroleum present at the brownfield and a certified copy of the results of an assessment;
- (4) A detailed explanation of the proposed cleanup or remediation of the brownfield, including an identification of the applicable cleanup standards, and a detailed description of the proposed use of the brownfield after completion of the cleanup or remediation;
- (5) An estimate of the total cost to clean up or remediate the brownfield in order to comply with the applicable cleanup standards. The total cost shall include the cost of employing a certified professional under section 122.654 of the Revised Code.
- (6) A detailed explanation of the portion of the estimated total cost of the cleanup or remediation of the brownfield that the applicant proposes to provide as required under sections 122.653 and 122.658 of the Revised Code and financial records supporting the proposal;
- (7) A certified copy of a resolution or ordinance approving the project that the applicant shall obtain from the board of township trustees of the township or the legislative authority of the municipal corporation in which the property is located, whichever is applicable;
- (8) A description of the estimated economic benefit that will result from a cleanup or remediation of the brownfield;
- (9) An application summary for purposes of review by an integrating committee or, if applicable, the executive committee of an integrating committee under division (B) of section 122.652 of the Revised Code;
- (10) With respect to applications for loans, information demonstrating that the applicant will implement a financial management plan that includes, without limitation, provisions for the satisfactory repayment of the loan;
- (11) Any other provisions that the director determines should be included in an application.

(B) Procedures for conducting public meetings and providing public notice under division (A) of section 122.652 of the Revised Code;

(C) Criteria to be used by integrating committees or, if required under division (C) of section 122.652 of the Revised Code, executive committees of integrating committees when prioritizing projects under division (B) of section 122.652 of the Revised Code. The policies and requirements also shall establish procedures that integrating committees or, if required under division (C) of section 122.652 of the Revised Code, executive committees of integrating committees shall use in applying the criteria.

(D) A selection process that provides for the prioritization of brownfield cleanup or remediation projects for which grant or loan applications are submitted under section 122.652 of the Revised Code. The policies and requirements shall require the selection process to give priority to projects in which the post-cleanup or

remediation use will be for a combination of residential, commercial, or industrial purposes, which may include the conversion of a portion of a brownfield to a recreation, park, or natural area that is integrated with the residential, commercial, or industrial use of the brownfield after cleanup or remediation, or will incorporate projects that are funded by grants awarded under sections 164.20 to 164.27 of the Revised Code. The policies and requirements shall require the selection process to incorporate and emphasize all of the following factors:

- (1) The potential economic benefit that will result from the cleanup or remediation of a brownfield;
- (2) The potential environmental improvement that will result from the cleanup or remediation of a brownfield;
- (3) The amount and nature of the match provided by an applicant as required under sections 122.653 and 122.658 of the Revised Code;
- (4) Funding priorities recommended by integrating committees or, if required under division (C) of section 122.652 of the Revised Code, executive committees of integrating committees under division (B) of section 122.652 of the Revised Code;
- (5) The potential benefit to low-income communities, including minority communities, that will result from the cleanup or remediation of a brownfield;
- (6) Any other factors that the director considers appropriate.

(E) The development of criteria that the director shall use when awarding grants under section 122.656 of the Revised Code. The criteria shall give priority to public health projects. In addition, the director, in consultation with the director of environmental protection, shall establish policies and requirements that require the criteria to include a public health project selection process that incorporates and emphasizes all of the following factors:

- (1) The potential environmental improvement that will result from the cleanup or remediation;
- (2) The ability of an applicant to access the property for purposes of the cleanup or remediation;
- (3) The name and qualifications of the cleanup or remediation contractor;
- (4) Any other factors that the director of development considers appropriate.

The director of development may develop any other policies and requirements that the director determines are necessary for the administration of section 122.656 of the Revised Code.

(F) The development of a brownfield cleanup and remediation oversight program to ensure compliance with sections 122.65 to 122.658 of the Revised Code and policies and requirements established under this section. The policies and requirements shall require the program to include, at a minimum, both of the following:

- (1) Procedures for the accounting of invoices and receipts and any other documents that are necessary to demonstrate that a cleanup or remediation was properly performed;
- (2) Procedures that are necessary to provide a detailed explanation of the status of the property five years after the completed cleanup or remediation.

(G) A delineation of what constitutes administrative costs for purposes of divisions (D) and (F) of section 122.658 of the Revised Code;

(H) Procedures and requirements for making loans and loan agreements that include at least all of the following:

(1) Not more than fifteen per cent of moneys annually allocated to the clean Ohio revitalization fund shall be used for loans.

(2) The loans shall be made at or below market rates of interest, including, without limitation, interest-free loans.

(3) The recipient of a loan shall identify a source of security and a source of repayment of the loan.

(4) The clean Ohio council may accept notes and other forms of obligation to evidence indebtedness, accept mortgages, liens, pledges, assignments, and other security interests to secure such indebtedness, and take any actions that are considered by the council to be appropriate to protect such security and safeguard against losses, including, without limitation, foreclosure and bidding on the purchase of property upon foreclosure or other sale.

(l) Any other policies and requirements that the director determines are necessary for the administration of sections 122.65 to 122.658 of the Revised Code.

Amended by 130th General Assembly File No. 25, HB 59, §101.01, eff. 9/29/2013.

Effective Date: 05-30-2002.

122.658 Clean Ohio revitalization fund - revolving loan fund.

(A) The clean Ohio revitalization fund is hereby created in the state treasury. The fund shall consist of moneys credited to it pursuant to section 151.40 of the Revised Code. Moneys in the fund shall be used to make grants or loans for projects that have been approved by the clean Ohio council in accordance with section 122.653 of the Revised Code, except that the council annually shall devote twenty per cent of the net proceeds of obligations deposited in the clean Ohio revitalization fund for the purposes of section 122.656 of the Revised Code.

Moneys in the clean Ohio revitalization fund may be used to pay reasonable costs incurred by the department of development and the environmental protection agency in administering sections 122.65 to 122.658 of the Revised Code. All investment earnings of the fund shall be credited to the fund. Investment earnings credited to the clean Ohio revitalization fund may be used to pay costs incurred by the department of development and the environmental protection agency pursuant to sections 122.65 to 122.658 of the Revised Code.

The department of development shall administer the clean Ohio revitalization fund in accordance with this section, policies and requirements established under section 122.657 of the Revised Code, and the terms of agreements entered into by the council under section 122.653 of the Revised Code.

(B) Grants awarded and loans made under section 122.653 of the Revised Code shall provide not more than seventy-five per cent of the estimated total cost of a project. A grant or loan to any one project shall not exceed three million dollars. An applicant shall provide at least twenty-five per cent of the estimated total cost of a project. The applicant's share may consist of one or a combination of any of the following:

(1) Payment of the cost of acquiring the property for the purposes of sections 122.65 to 122.658 of the Revised Code;

(2) Payment of the reasonable cost of an assessment at the property;

(3) The reasonable value, as determined by the council, of labor and materials that will be contributed by the applicant in performing the cleanup or remediation;

(4) Moneys received by the applicant in any form for use in performing the cleanup or remediation;

(5) Loans secured by the applicant for the purpose of the cleanup or remediation of the brownfield.

Costs that were incurred more than two years prior to the submission of an application to the clean Ohio council for the acquisition of property, assessments, and labor and materials shall not be used as part of the applicant's matching share.

(C) The department of development shall not make any payment to an applicant from the clean Ohio revitalization fund to pay costs of the applicant that were not included in an application for a grant or loan under section 122.653 of the Revised Code or that exceed the amount of the estimated total cost of the project included in the application. If, upon completion of a project, the costs of the project are less than the amounts included in the application, the amounts included in the application less the amounts of the actual costs of the project shall be credited to the clean Ohio revitalization fund. However, the amounts credited shall be equivalent in percentage to the percentage of the costs of the project that were to be funded by the grant or loan from the fund.

(D) Grants awarded or loans made under section 122.653 of the Revised Code from the clean Ohio revitalization fund shall be used by an applicant only to pay the costs of the actual cleanup or remediation of a brownfield and shall not be used by an applicant to pay any administrative costs incurred by the applicant. Costs related to the use of a certified professional for purposes of section 122.654 of the Revised Code are not administrative costs and may be paid with moneys from grants awarded or loans made under section 122.653 of the Revised Code.

(E) The portion of net proceeds of obligations devoted under division (A) of this section for the purposes of section 122.656 of the Revised Code shall be used to make grants for assessments, cleanup or remediation of

brownfields, and public health projects that have been approved by the director of development under that section. The department of development shall administer section 122.656 of the Revised Code in accordance with this section, policies and requirements established under section 122.657 of the Revised Code, and the terms of agreements entered into by the director under section 122.656 of the Revised Code. The director shall not grant more than twenty-five million dollars for public health projects under section 122.656 of the Revised Code.

(F) Grants awarded under section 122.656 of the Revised Code shall be used by an applicant only to pay the costs of actually conducting an assessment, a cleanup or remediation of a brownfield, or a public health project and shall not be used by an applicant to pay any administrative costs incurred by the applicant. Costs related to the use of a certified professional for purposes of section 122.654 of the Revised Code are not administrative costs and may be paid with moneys from grants awarded under section 122.656 of the Revised Code.

Amended by 130th General Assembly File No. 25, HB 59, §101.01, eff. 9/29/2013.

Effective Date: 06-26-2003 .

122.659 Effect on other provisions.

(A) Nothing in sections [122.65](#) to [122.658](#) of the Revised Code, nor any agreement entered into under those sections, shall be construed to amend, modify, repeal, or otherwise alter any other provision of the Revised Code relating to administrative, civil, or criminal penalties, or enforcement actions and remedies available to the environmental protection agency, or in any way amend, modify, repeal, or alter the authority of that agency to bring administrative, civil, or criminal actions under any provision of the Revised Code.

(B) Nothing in sections [122.65](#) to [122.658](#) of the Revised Code shall affect the ability or authority of any person that is undertaking or has undertaken investigation or remediation activities at a brownfield under those sections to seek cost recovery or contribution from or any relief available against any person who may have liability with respect to the brownfield.

(C)(1) An applicant who has entered into an agreement under section [122.653](#) or [122.656](#) of the Revised Code is not liable in a civil action under the Revised Code or the common law of the state for the costs of an assessment or cleanup or remediation of hazardous substances or petroleum that is present at or on the property at the time at which the agreement was entered into, and is not subject to the issuance of an order by the director of environmental protection under Chapter 3714., 3734., 3750., 3751., 3752., 6109., or 6111. of the Revised Code regarding an assessment or cleanup or remediation of hazardous substances or petroleum that is present at or on the property at the time at which the agreement was entered into, when all of the following conditions apply:

(a) No action or omission of the applicant caused, contributed to, or exacerbated a release or threatened release of hazardous substances or petroleum at or on the property.

(b) The applicant conducts or causes to be conducted all assessments and cleanup or remediation at or on the property in compliance with the agreement and in accordance with all applicable laws.

(c) The applicant conducts or causes to be conducted activities occurring at the property, which are not related to assessments or cleanup or remediation at or on the property, in compliance with any applicable requirements established under Chapters 3714., 3734., 3737., 3750., 3751., 3752., 3767., 6109., and 6111. of the Revised Code and rules adopted under those chapters.

(2) Division (C) of this section does not create, and shall not be construed as creating, a new cause of action against or substantive legal right for the applicant.

(3) Division (C) of this section does not affect, and shall not be construed as affecting, any immunities from civil liability or defenses established by another section of the Revised Code or available at common law to which an applicant may be entitled.

(4) Nothing in division (C) of this section shall be construed as affecting any obligations to comply with any environmental laws established in the Revised Code or the common law of the state with respect to any release of hazardous substances or petroleum after the issuance of a covenant not to sue under Chapter 3746. of the Revised Code or a determination made under division (G) of section [122.654](#) of the Revised Code.

Effective Date: 07-26-2001.