

As Passed by the Senate

124th General Assembly

Regular Session

2001-2002

Sub. S. B. No. 144

SENATORS Mumper, Jordan, Spada, Mead, DiDonato, Amstutz, Austria,
Randy Gardner, Robert Gardner, Harris, Hottinger, Jacobson, Oelslager,
Wachtmann, White, Carnes, Ryan, Prentiss

A B I L L

To amend sections 3706.01, 5733.98, and 5747.98 and to
enact sections 901.13, 5733.46, and 5747.75 of the
Revised Code to create the Ethanol Incentive Board,
to create a tax credit against corporation
franchise or income tax liability for investments
in ethanol plants whose business plans have been
approved by the Board, and to provide that ethanol
plants are air quality facilities eligible for Ohio
Air Quality Development Authority financing.

1
2
3
4
5
6
7
8
9

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 3706.01, 5733.98, and 5747.98 be
amended and sections 901.13, 5733.46, and 5747.75 of the Revised
Code be enacted to read as follows:

10
11
12

Sec. 901.13. (A) As used in this section:

13

(1) "Ethanol" has the same meaning as in section 5733.46 of
the Revised Code.

14
15

(2) "Facility" means an ethanol production plant that will be
located in this state.

16
17

(B) There is hereby created the ethanol incentive board. The board shall consist of the following five members: the director of agriculture, who shall serve as chairperson of the board, the director of development, the executive director of the Ohio air quality development authority, one member appointed by the speaker of the house of representatives, and one member appointed by the president of the senate. Initial appointments to the board shall be made within thirty days of the effective date of this section. Vacancies shall be filled in the same manner provided for original appointments. Members of the board shall serve without compensation. The board shall meet and conduct its business as directed by the chairperson. The board shall cease to exist January 1, 2012.

(C) The board's sole duty is to review any application that is submitted to it under this section. The board shall approve an application only if it determines, by the affirmative vote of all members of the board, that the applicant's business plan for a facility meets the requirements established by division (D) of this section.

(D) The owner of a facility may apply to the board, on an application provided by the director of agriculture, for approval of the facility's business plan under this section. Within sixty days of receipt of an application, the board shall determine whether the applicant's business plan meets the following requirements:

(1) The business plan is for the construction and operation of a facility;

(2) The business plan contains detailed information regarding:

(a) The availability and price of corn in the area where the facility will be located;

(b) The availability and cost of energy needed for operation 49
of the facility; 50

(c) The availability of water and waste disposal systems in 51
the area where the facility will be located; 52

(d) The availability of labor and a qualified site manager 53
for the facility. 54

(3) The business plan analyzes any proposed marketing 55
agreements for the products produced by the facility; 56

(4) The facility to be constructed and operated under the 57
business plan meets the eligibility requirements of Chapter 3706. 58
of the Revised Code such that application could be made to the 59
Ohio air quality development authority for a loan, grant, or other 60
financing under that chapter; 61

(5) The facility to be constructed and operated under the 62
business plan is majority-owned by Ohio farmers or will be prior 63
to the first day the facility commences production; 64

(6) The business plan meets any other requirements 65
established by the board under rules adopted in accordance with 66
division (G) of this section. 67

The board shall issue a certificate of approval for each 68
application approved under this section, and any taxpayer that 69
invests money in the facility for which a business plan has been 70
approved may claim a tax credit for such investment under section 71
5733.46 or 5747.75 of the Revised Code. 72

(E) Any business plan submitted to the board under this 73
section is not a public record subject to section 149.43 of the 74
Revised Code. 75

(F) The board shall notify the tax commissioner of any 76
certificate of approval issued under this section, within ten days 77
of its issuance. 78

(G) The director of agriculture, in consultation with the 79
director of development and in accordance with Chapter 119. of the 80
Revised Code, shall adopt rules necessary to implement this 81
section, including rules prescribing procedures and forms for 82
administering this section. 83

(H) The ethanol incentive board created by this section is 84
not an agency for purposes of section 101.82 to 101.87 of the 85
Revised Code. 86

Sec. 3706.01. As used in this chapter: 87

(A) "Governmental agency" means a department, division, or 88
other unit of state government, a municipal corporation, county, 89
township, and other political subdivision, or any other public 90
corporation or agency having the power to acquire, construct, or 91
operate air quality facilities, the United States or any agency 92
thereof, and any agency, commission, or authority established 93
pursuant to an interstate compact or agreement. 94

(B) "Person" means any individual, firm, partnership, 95
association, or corporation, or any combination thereof. 96

(C) "Air contaminant" means particulate matter, dust, fumes, 97
gas, mist, smoke, noise, vapor, heat, radioactivity, radiation, or 98
odorous substance, or any combination thereof. 99

(D) "Air pollution" means the presence in the ambient air of 100
one or more air contaminants in sufficient quantity and of such 101
characteristics and duration as to injure human health or welfare, 102
plant or animal life, or property, or that unreasonably interferes 103
with the comfortable enjoyment of life or property. 104

(E) "Ambient air" means that portion of the atmosphere 105
outside of buildings and other enclosures, stacks, or ducts that 106
surrounds human, plant, or animal life, or property. 107

(F) "Emission" means the release into the outdoor atmosphere 108

of an air contaminant.

(G) "Air quality facility" means any of the following:

(1) Any method, modification or replacement of property, process, device, structure, or equipment that removes, reduces, prevents, contains, alters, conveys, stores, disperses, or disposes of air contaminants or substances containing air contaminants, or that renders less noxious or reduces the concentration of air contaminants in the ambient air, including, without limitation, facilities and expenditures that qualify as air pollution control facilities under section 103 (C)(4)(F) of the Internal Revenue Code of 1954, as amended, and regulations adopted thereunder, ~~motor;~~

(2) Motor vehicle inspection stations operated in accordance with, and any equipment used for motor vehicle inspections conducted under, section 3704.14 of the Revised Code and rules adopted under it, ~~any;~~

(3) Ethanol facilities, including any equipment used at the ethanol facility for the production of ethanol;

(4) Any property or portion thereof used for the collection, storage, treatment, utilization, processing, or final disposal of solid waste resulting from any method, process, device, structure, or equipment that removes, reduces, prevents, contains, alters, conveys, stores, disperses, or disposes of air contaminants, or that renders less noxious or reduces the concentration of air contaminants in the ambient air, ~~and any;~~

(5) Any property, device, or equipment that promotes the reduction of emissions of air contaminants into the ambient air through improvements in the efficiency of energy utilization or energy conservation, ~~and.~~

"Air quality facility" further ~~including~~ includes any property or system to be used in whole or in part for any of ~~such~~

the purposes in divisions (G)(1) to (5) of this section, whether 140
another purpose is also served, and any property or system 141
incidental to or ~~which~~ that has to do with, or the end purpose of 142
which is, any of the foregoing. Air quality facilities that are 143
defined in this division for industry, commerce, distribution, or 144
research, including public utility companies, are hereby 145
determined to be those ~~which~~ that qualify as facilities for the 146
control of air pollution and thermal pollution related to air 147
under Section 13 of Article VIII, Ohio Constitution. 148

(H) "Project" or "air quality project" means any air quality 149
facility, including undivided or other interests therein, acquired 150
or to be acquired or constructed or to be constructed by the Ohio 151
air quality development authority under this chapter, or acquired 152
or to be acquired or constructed or to be constructed by a 153
governmental agency or person with all or a part of the cost 154
thereof being paid from a loan or grant from the authority under 155
this chapter, including all buildings and facilities that the 156
authority determines necessary for the operation of the project, 157
together with all property, rights, easements, and interests that 158
may be required for the operation of the project. 159

(I) "Cost" as applied to an air quality project means the 160
cost of acquisition and construction, the cost of acquisition of 161
all land, rights-of-way, property rights, easements, franchise 162
rights, and interests required for such acquisition and 163
construction, the cost of demolishing or removing any buildings or 164
structures on land so acquired, including the cost of acquiring 165
any lands to which such buildings or structures may be moved, the 166
cost of acquiring or constructing and equipping a principal office 167
and sub-offices of the authority, the cost of diverting highways, 168
interchange of highways, and access roads to private property, 169
including the cost of land or easements for such access roads, the 170
cost of public utility and common carrier relocation or 171

duplication, the cost of all machinery, furnishings, and 172
equipment, financing charges, interest prior to and during 173
construction and for no more than eighteen months after completion 174
of construction, engineering, expenses of research and development 175
with respect to air quality facilities, legal expenses, plans, 176
specifications, surveys, studies, estimates of cost and revenues, 177
working capital, other expenses necessary or incident to 178
determining the feasibility or practicability of acquiring or 179
constructing such project, administrative expense, and such other 180
expense as may be necessary or incident to the acquisition or 181
construction of the project, the financing of such acquisition or 182
construction, including the amount authorized in the resolution of 183
the authority providing for the issuance of air quality revenue 184
bonds to be paid into any special funds from the proceeds of such 185
bonds, and the financing of the placing of such project in 186
operation. Any obligation, cost, or expense incurred by any 187
governmental agency or person for surveys, borings, preparation of 188
plans and specifications, and other engineering services, or any 189
other cost described above, in connection with the acquisition or 190
construction of a project may be regarded as a part of the cost of 191
that project and may be reimbursed out of the proceeds of air 192
quality revenue bonds as authorized by this chapter. 193

(J) "Owner" includes an individual, copartnership, 194
association, or corporation having any title or interest in any 195
property, rights, easements, or interests authorized to be 196
acquired by this chapter. 197

(K) "Revenues" means all rentals and other charges received 198
by the authority for the use or services of any air quality 199
project, any gift or grant received with respect to any air 200
quality project, any moneys received with respect to the lease, 201
sublease, sale, including installment sale or conditional sale, or 202
other disposition of an air quality project, moneys received in 203

repayment of and for interest on any loans made by the authority
to a person or governmental agency, whether from the United States
or any department, administration, or agency thereof, or
otherwise, proceeds of such bonds to the extent that use thereof
for payment of principal of, premium, if any, or interest on the
bonds is authorized by the authority, proceeds from any insurance,
condemnation, or guaranty pertaining to a project or property
mortgaged to secure bonds or pertaining to the financing of the
project, and income and profit from the investment of the proceeds
of air quality revenue bonds or of any revenues.

(L) "Public roads" includes all public highways, roads, and
streets in the state, whether maintained by the state, county,
city, township, or other political subdivision.

(M) "Public utility facilities" includes tracks, pipes,
mains, conduits, cables, wires, towers, poles, and other equipment
and appliances of any public utility.

(N) "Construction," unless the context indicates a different
meaning or intent, includes reconstruction, enlargement,
improvement, or providing furnishings or equipment.

(O) "Air quality revenue bonds," unless the context indicates
a different meaning or intent, includes air quality revenue notes,
air quality revenue renewal notes, and air quality revenue
refunding bonds, except that notes issued in anticipation of the
issuance of bonds shall have a maximum maturity of five years as
provided in section 3706.05 of the Revised Code and notes or
renewal notes issued as the definitive obligation may be issued
maturing at such time or times with a maximum maturity of forty
years from the date of issuance of the original note.

(P) "Solid waste" means any garbage; refuse; sludge from a
waste water treatment plant, water supply treatment plant, or air
pollution control facility; and other discarded material,

including solid, liquid, semisolid, or contained gaseous material
resulting from industrial, commercial, mining, and agricultural
operations, and from community activities, but not including solid
or dissolved material in domestic sewage, or solid or dissolved
material in irrigation return flows or industrial discharges that
are point sources subject to permits under section 402 of the
"Federal Water Pollution Control Act Amendments of 1972," 86 Stat.
880, 33 U.S.C.A. 1342, as amended, or source, special nuclear, or
byproduct material as defined by the "Atomic Energy Act of 1954,"
68 Stat. 921, 42 U.S.C.A. 2011, as amended.

(Q) "Sludge" means any solid, semisolid, or liquid waste,
other than a recyclable byproduct, generated from a municipal,
commercial, or industrial waste water treatment plant, water
supply plant, or air pollution control facility or any other such
wastes having similar characteristics and effects.

(R) "Ethanol facility" means a plant at which ethanol is
produced.

(S) "Ethanol" means fermentation ethyl alcohol derived from
agricultural products, including potatoes, cereal, grains, cheese
whey, and sugar beets; forest products; or other renewable
resources, including residue and waste generated from the
production, processing, and marketing of agricultural products,
forest products, and other renewable resources, that meets all of
the specifications in the American society for testing and
materials (ASTM) specification D 4806-88 and is denatured as
specified in Parts 20 and 21 of Title 27 of the Code of Federal
Regulations.

Sec. 5733.46. (A) As used in this section:

(1) "Ethanol" means fermentation ethyl alcohol derived from
agricultural products, including potatoes, cereal, grains, cheese
whey, and sugar beets; forest products; or other renewable

resources, including residue and waste generated from the
production, processing, and marketing of agricultural products,
forest products, and other renewable resources that meet all of
the specifications in the American society for testing and
materials (ASTM) specification D 4806-88 and is denatured as
specified in Parts 20 and 21 of Title 27 of the Code of Federal
Regulations.

266
267
268
269
270
271
272

(2) "Certified ethanol plant" means a facility at which
ethanol is produced and for which a certificate has been issued
under section 901.13 of the Revised Code.

273
274
275

(3) "Money" means United States currency, or a check, draft,
or cashier's check for United States currency, payable on demand
and drawn on a bank.

276
277
278

(B) Beginning in tax year 2001 and ending in tax year 2011,
there is hereby allowed a nonrefundable credit against the tax
imposed by section 5733.06 of the Revised Code for a taxpayer that
invests money in a certified ethanol plant. The amount of the
credit equals fifty per cent of the money the taxpayer invests in
the plant, but the credit amount shall not exceed five thousand
dollars. The credit shall be claimed in the tax year in which the
investment was made.

279
280
281
282
283
284
285
286

(C) The taxpayer shall claim the credit in the order required
by section 5733.98 of the Revised Code. Any credit amount in
excess of the tax due under section 5733.06 of the Revised Code,
after allowing for any other credits preceding the credit in that
order, may be carried forward for three tax years, but the amount
of the excess credit allowed in any such year shall be deducted
from the balance carried forward to the next year.

287
288
289
290
291
292
293

(D) The tax commissioner may require that the taxpayer
furnish information as is necessary to support the claim for the
credit under this section, and no credit shall be allowed unless

294
295
296

the information is provided.

297

Sec. 5733.98. (A) To provide a uniform procedure for
calculating the amount of tax imposed by section 5733.06 of the
Revised Code that is due under this chapter, a taxpayer shall
claim any credits to which it is entitled in the following order,
except as otherwise provided in section 5733.058 of the Revised
Code:

299

300

301

302

303

304

(1) The credit for taxes paid by a qualifying pass-through
entity allowed under section 5733.0611 of the Revised Code;

305

306

(2) The credit allowed for financial institutions under
section 5733.45 of the Revised Code;

307

308

(3) The credit for qualifying affiliated groups under section
5733.068 of the Revised Code;

309

310

(4) The subsidiary corporation credit under section 5733.067
of the Revised Code;

311

312

(5) The savings and loan assessment credit under section
5733.063 of the Revised Code;

313

314

(6) The credit for recycling and litter prevention donations
under section 5733.064 of the Revised Code;

315

316

(7) The credit for employers that enter into agreements with
child day-care centers under section 5733.36 of the Revised Code;

317

318

(8) The credit for employers that reimburse employee child
day-care expenses under section 5733.38 of the Revised Code;

319

320

(9) The credit for maintaining railroad active grade crossing
warning devices under section 5733.43 of the Revised Code;

321

322

(10) The credit for purchases of lights and reflectors under
section 5733.44 of the Revised Code;

323

324

(11) The job retention credit under division (B) of section

325

5733.0610 of the Revised Code;	326
(12) The credit for manufacturing investments under section 5733.061 of the Revised Code;	327 328
(13) The credit for purchases of new manufacturing machinery and equipment under section 5733.31 or section 5733.311 of the Revised Code;	329 330 331
(14) The second credit for purchases of new manufacturing machinery and equipment under section 5733.33 of the Revised Code;	332 333
(15) The job training credit under section 5733.42 of the Revised Code;	334 335
(16) The credit for qualified research expenses under section 5733.351 of the Revised Code;	336 337
(17) The enterprise zone credit under section 5709.66 of the Revised Code;	338 339
(18) The credit for the eligible costs associated with a voluntary action under section 5733.34 of the Revised Code;	340 341
(19) The credit for employers that establish on-site child day-care under section 5733.37 of the Revised Code;	342 343
(20) <u>The ethanol plant investment credit under section 5733.46 of the Revised Code;</u>	344 345
<u>(21)</u> The credit for purchases of qualifying grape production property under section 5733.32 of the Revised Code;	346 347
(21) <u>(22)</u> The export sales credit under section 5733.069 of the Revised Code;	348 349
(22) <u>(23)</u> The credit for research and development and technology transfer investors under section 5733.35 of the Revised Code;	350 351 352
(23) <u>(24)</u> The enterprise zone credits under section 5709.65 of the Revised Code;	353 354

~~(24)~~(25) The credit for using Ohio coal under section 5733.39 355
of the Revised Code; 356

~~(25)~~(26) The refundable jobs creation credit under division 357
(A) of section 5733.0610 of the Revised Code. 358

(B) For any credit except the refundable jobs creation 359
credit, the amount of the credit for a tax year shall not exceed 360
the tax due after allowing for any other credit that precedes it 361
in the order required under this section. Any excess amount of a 362
particular credit may be carried forward if authorized under the 363
section creating that credit. 364

Sec. 5747.75. (A) As used in this section: 365

(1) "Ethanol" means fermentation ethyl alcohol derived from 366
agricultural products, including potatoes, cereal, grains, cheese 367
whey, and sugar beets; forest products; or other renewable 368
resources, including residue and waste generated from the 369
production, processing, and marketing of agricultural products, 370
forest products, and other renewable resources that meet all of 371
the specifications in the American society for testing and 372
materials (ASTM) specification D 4806-88 and is denatured as 373
specified in Parts 20 and 21 of Title 27 of the Code of Federal 374
Regulations. 375

(2) "Certified ethanol plant" means a facility at which 376
ethanol is produced and for which a certificate has been issued 377
under section 901.13 of the Revised Code. 378

(3) "Money" means United States currency, or a check, draft, 379
or cashier's check for United States currency, payable on demand 380
and drawn on a bank. 381

(B) Beginning in taxable year 2001 and ending in taxable year 382
2011, there is hereby allowed a nonrefundable credit against the 383
tax imposed by section 5747.02 of the Revised Code for a taxpayer 384

that invests money in a certified ethanol plant. The amount of the
credit equals fifty per cent of the money the taxpayer invests in
the plant, but the credit amount shall not exceed five thousand
dollars. The credit shall be claimed in the taxable year in which
the investment was made.

(C) The taxpayer shall claim the credit in the order required
by section 5747.98 of the Revised Code. Any credit amount in
excess of the tax due under section 5747.02 of the Revised Code,
after allowing for any other credits preceding the credit in that
order, may be carried forward for three taxable years, but the
amount of the excess credit allowed in any such year shall be
deducted from the balance carried forward to the next year.

(D) If the taxpayer is a direct or indirect investor in a
pass-through entity that has made an investment under this
section, the taxpayer may claim its proportionate or distributive
share of the credit allowed under this section.

(E) The tax commissioner may require that the taxpayer
furnish information as is necessary to support the claim for the
credit under this section, and no credit shall be allowed unless
the information is provided.

Sec. 5747.98. (A) To provide a uniform procedure for
calculating the amount of tax due under section 5747.02 of the
Revised Code, a taxpayer shall claim any credits to which the
taxpayer is entitled in the following order:

(1) The retirement income credit under division (B) of
section 5747.055 of the Revised Code;

(2) The senior citizen credit under division (C) of section
5747.05 of the Revised Code;

(3) The lump sum distribution credit under division (D) of

section 5747.05 of the Revised Code;	415
(4) The dependent care credit under section 5747.054 of the Revised Code;	416 417
(5) The lump sum retirement income credit under division (C) of section 5747.055 of the Revised Code;	418 419
(6) The lump sum retirement income credit under division (D) of section 5747.055 of the Revised Code;	420 421
(7) The lump sum retirement income credit under division (E) of section 5747.055 of the Revised Code;	422 423
(8) The credit for displaced workers who pay for job training under section 5747.27 of the Revised Code;	424 425
(9) The campaign contribution credit under section 5747.29 of the Revised Code;	426 427
(10) The twenty-dollar personal exemption credit under section 5747.022 of the Revised Code;	428 429
(11) The joint filing credit under division (G) of section 5747.05 of the Revised Code;	430 431
(12) The nonresident credit under division (A) of section 5747.05 of the Revised Code;	432 433
(13) The credit for a resident's out-of-state income under division (B) of section 5747.05 of the Revised Code;	434 435
(14) The credit for employers that enter into agreements with child day-care centers under section 5747.34 of the Revised Code;	436 437 438
(15) The credit for employers that reimburse employee child day-care expenses under section 5747.36 of the Revised Code;	439 440
(16) The credit for adoption of a minor child under section 5747.37 of the Revised Code;	441 442

(17) The credit for purchases of lights and reflectors under section 5747.38 of the Revised Code;	443 444
(18) The job retention credit under division (B) of section 5747.058 of the Revised Code;	445 446
(19) The credit for manufacturing investments under section 5747.051 of the Revised Code;	447 448
(20) The credit for purchases of new manufacturing machinery and equipment under section 5747.26 or section 5747.261 of the Revised Code;	449 450 451
(21) The second credit for purchases of new manufacturing machinery and equipment and the credit for using Ohio coal under section 5747.31 of the Revised Code;	452 453 454
(22) The job training credit under section 5747.39 of the Revised Code;	455 456
(23) The enterprise zone credit under section 5709.66 of the Revised Code;	457 458
(24) The credit for the eligible costs associated with a voluntary action under section 5747.32 of the Revised Code;	459 460
(25) The credit for employers that establish on-site child day-care centers under section 5747.35 of the Revised Code;	461 462
(26) <u>The ethanol plant investment credit under section 5747.75 of the Revised Code;</u>	463 464
<u>(27)</u> The credit for purchases of qualifying grape production property under section 5747.28 of the Revised Code;	465 466
+(27)+ <u>(28)</u> The export sales credit under section 5747.057 of the Revised Code;	467 468
+(28)+ <u>(29)</u> The credit for research and development and technology transfer investors under section 5747.33 of the Revised Code;	469 470 471

~~(29)~~(30) The enterprise zone credits under section 5709.65 of the Revised Code; 472 473

~~(30)~~(31) The refundable jobs creation credit under division (A) of section 5747.058 of the Revised Code; 474 475

~~(31)~~(32) The refundable credit for taxes paid by a qualifying entity granted under section 5747.059 of the Revised Code; 476 477 478

~~(32)~~(33) The refundable credits for taxes paid by a qualifying pass-through entity granted under division (J) of section 5747.08 of the Revised Code. 479 480 481

(B) For any credit, except the refundable credits enumerated in divisions (A)~~(30)~~, (31), ~~and~~ (32), and (33) of this section and the credit granted under division (I) of section 5747.08 of the Revised Code, the amount of the credit for a taxable year shall not exceed the tax due after allowing for any other credit that precedes it in the order required under this section. Any excess amount of a particular credit may be carried forward if authorized under the section creating that credit. Nothing in this chapter shall be construed to allow a taxpayer to claim, directly or indirectly, a credit more than once for a taxable year. 482 483 484 485 486 487 488 489 490 491

Section 2. That existing sections 3706.01, 5733.98, and 5747.98 of the Revised Code are hereby repealed. 492 493