

# As Reported by the Senate Ways and Means Committee

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## 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.

## 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:

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

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

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

(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

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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  
of the facility;

(c) The availability of water and waste disposal systems in

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  
administering this section.

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

**Sec. 3706.01.** As used in this chapter:

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

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

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

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

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

(F) "Emission" means the release into the outdoor atmosphere  
of an air contaminant.

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

(1) Any method, modification or replacement of property, 111  
process, device, structure, or equipment that removes, reduces, 112  
prevents, contains, alters, conveys, stores, disperses, or 113  
disposes of air contaminants or substances containing air 114  
contaminants, or that renders less noxious or reduces the 115  
concentration of air contaminants in the ambient air, including, 116  
without limitation, facilities and expenditures that qualify as 117  
air pollution control facilities under section 103 (C)(4)(F) of 118  
the Internal Revenue Code of 1954, as amended, and regulations 119  
adopted thereunder,~~motor;~~ 120

(2) Motor vehicle inspection stations operated in accordance 121  
with, and any equipment used for motor vehicle inspections 122  
conducted under, section 3704.14 of the Revised Code and rules 123  
adopted under it,~~any;~~ 124

(3) Ethanol facilities, including any equipment used at the 125  
ethanol facility for the production of ethanol; 126

(4) Any property or portion thereof used for the collection, 127  
storage, treatment, utilization, processing, or final disposal of 128  
solid waste resulting from any method, process, device, structure, 129  
or equipment that removes, reduces, prevents, contains, alters, 130  
conveys, stores, disperses, or disposes of air contaminants, or 131  
that renders less noxious or reduces the concentration of air 132  
contaminants in the ambient air,~~and any;~~ 133

(5) Any property, device, or equipment that promotes the 134  
reduction of emissions of air contaminants into the ambient air 135  
through improvements in the efficiency of energy utilization or 136  
energy conservation,~~and.~~ 137

"Air quality facility" further ~~including~~ includes any 138  
property or system to be used in whole or in part for any of ~~such~~ 139  
the purposes in divisions (G)(1) to (5) of this section, whether 140  
another purpose is also served, and any property or system 141

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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

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construction and for no more than eighteen months after completion  
of construction, engineering, expenses of research and development  
with respect to air quality facilities, legal expenses, plans,  
specifications, surveys, studies, estimates of cost and revenues,  
working capital, other expenses necessary or incident to  
determining the feasibility or practicability of acquiring or  
constructing such project, administrative expense, and such other  
expense as may be necessary or incident to the acquisition or  
construction of the project, the financing of such acquisition or  
construction, including the amount authorized in the resolution of  
the authority providing for the issuance of air quality revenue  
bonds to be paid into any special funds from the proceeds of such  
bonds, and the financing of the placing of such project in  
operation. Any obligation, cost, or expense incurred by any  
governmental agency or person for surveys, borings, preparation of  
plans and specifications, and other engineering services, or any  
other cost described above, in connection with the acquisition or  
construction of a project may be regarded as a part of the cost of  
that project and may be reimbursed out of the proceeds of air  
quality revenue bonds as authorized by this chapter.

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

(K) "Revenues" means all rentals and other charges received  
by the authority for the use or services of any air quality  
project, any gift or grant received with respect to any air  
quality project, any moneys received with respect to the lease,  
sublease, sale, including installment sale or conditional sale, or  
other disposition of an air quality project, moneys received in  
repayment of and for interest on any loans made by the authority  
to a person or governmental agency, whether from the United States

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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.

(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.

(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.

(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.

(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.

(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  
the information is provided.

<b>Sec. 5733.98.</b> (A) To provide a uniform procedure for	299
calculating the amount of tax imposed by section 5733.06 of the	300
Revised Code that is due under this chapter, a taxpayer shall	301
claim any credits to which it is entitled in the following order,	302
except as otherwise provided in section 5733.058 of the Revised	303
Code:	304
(1) The credit for taxes paid by a qualifying pass-through	305
entity allowed under section 5733.0611 of the Revised Code;	306
(2) The credit allowed for financial institutions under	307
section 5733.45 of the Revised Code;	308
(3) The credit for qualifying affiliated groups under section	309
5733.068 of the Revised Code;	310
(4) The subsidiary corporation credit under section 5733.067	311
of the Revised Code;	312
(5) The savings and loan assessment credit under section	313
5733.063 of the Revised Code;	314
(6) The credit for recycling and litter prevention donations	315
under section 5733.064 of the Revised Code;	316
(7) The credit for employers that enter into agreements with	317
child day-care centers under section 5733.36 of the Revised Code;	318
(8) The credit for employers that reimburse employee child	319
day-care expenses under section 5733.38 of the Revised Code;	320
(9) The credit for maintaining railroad active grade crossing	321
warning devices under section 5733.43 of the Revised Code;	322
(10) The credit for purchases of lights and reflectors under	323
section 5733.44 of the Revised Code;	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	327

5733.061 of the Revised Code;	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
<del>(21)</del> <u>(22)</u> The export sales credit under section 5733.069 of the Revised Code;	348 349
<del>(22)</del> <u>(23)</u> The credit for research and development and technology transfer investors under section 5733.35 of the Revised Code;	350 351 352
<del>(23)</del> <u>(24)</u> The enterprise zone credits under section 5709.65 of the Revised Code;	353 354
<del>(24)</del> <u>(25)</u> The credit for using Ohio coal under section 5733.39 of the Revised Code;	355 356

~~+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 385  
credit equals fifty per cent of the money the taxpayer invests in 386

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;

(4) The dependent care credit under section 5747.054 of the

Revised Code;	417
(5) The lump sum retirement income credit under division (C)	418
of section 5747.055 of the Revised Code;	419
(6) The lump sum retirement income credit under division (D)	420
of section 5747.055 of the Revised Code;	421
(7) The lump sum retirement income credit under division (E)	422
of section 5747.055 of the Revised Code;	423
(8) The credit for displaced workers who pay for job training	424
under section 5747.27 of the Revised Code;	425
(9) The campaign contribution credit under section 5747.29 of	426
the Revised Code;	427
(10) The twenty-dollar personal exemption credit under	428
section 5747.022 of the Revised Code;	429
(11) The joint filing credit under division (G) of section	430
5747.05 of the Revised Code;	431
(12) The nonresident credit under division (A) of section	432
5747.05 of the Revised Code;	433
(13) The credit for a resident's out-of-state income under	434
division (B) of section 5747.05 of the Revised Code;	435
(14) The credit for employers that enter into agreements with	436
child day-care centers under section 5747.34 of the Revised Code;	437
	438
(15) The credit for employers that reimburse employee child	439
day-care expenses under section 5747.36 of the Revised Code;	440
(16) The credit for adoption of a minor child under section	441
5747.37 of the Revised Code;	442
(17) The credit for purchases of lights and reflectors under	443
section 5747.38 of the Revised Code;	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
<del>+(27)+</del> <u>(28)</u> The export sales credit under section 5747.057 of the Revised Code;	467 468
<del>+(28)+</del> <u>(29)</u> The credit for research and development and technology transfer investors under section 5747.33 of the Revised Code;	469 470 471
<del>+(29)+</del> <u>(30)</u> The enterprise zone credits under section 5709.65 of the Revised Code;	472 473

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

~~(31)~~(32) The refundable credit for taxes paid by a qualifying 476  
entity granted under section 5747.059 of the Revised Code; 477  
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~~(32)~~(33) The refundable credits for taxes paid by a 479  
qualifying pass-through entity granted under division (J) of 480  
section 5747.08 of the Revised Code. 481

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

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