

**As Introduced**

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**H. B. No. 382**

**Representative Wagoner**

**Cosponsors: Representatives Huffman, Ujvagi, Hughes, Zehringer, Latta,  
Peterson, Stebelton, McGregor, J., Brown, Fende, Batchelder, Goodwin,  
Combs, Hite**

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**A B I L L**

To amend section 122.171 of the Revised Code to 1  
expand the job retention tax credit for eligible 2  
businesses with corporate headquarters in this 3  
state. 4

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

**Section 1.** That section 122.171 of the Revised Code be 5  
amended to read as follows: 6

**Sec. 122.171.** (A) As used in this section: 7

(1) "Capital investment project" means a plan of investment 8  
at a project site for the acquisition, construction, renovation, 9  
or repair of buildings, machinery, or equipment, or for 10  
capitalized costs of basic research and new product development 11  
determined in accordance with generally accepted accounting 12  
principles, but does not include any of the following: 13

(a) Payments made for the acquisition of personal property 14  
through operating leases; 15

(b) Project costs paid before January 1, 2002; 16

(c) Payments made to a related member as defined in section 17  
5733.042 of the Revised Code or to an elected consolidated 18  
taxpayer or a combined taxpayer as defined in section 5751.01 of 19  
the Revised Code. 20

(2) "Eligible business" means a either of the following: 21

(a) A corporation that satisfies all of the following: 22

(i) Its sole North American corporate headquarters is in this 23  
state; 24

(ii) More than five hundred employees are employed at such 25  
headquarters; 26

(iii) The principal management and executive decisions 27  
regarding the corporation's operations are made at such 28  
headquarters; 29

(iv) The corporation received gross revenues in excess of one 30  
billion dollars in each of the corporation's three fiscal years 31  
immediately preceding the filing of an application for a tax 32  
credit under this section; or 33

(b) A business with Ohio operations satisfying all of the 34  
following: 35

~~(a)~~(i) Employed an average of at least one thousand employees 36  
in full-time employment positions at a project site during each of 37  
the twelve months preceding the application for a tax credit under 38  
this section; ~~and~~ 39

~~(b)~~(ii) On or after January 1, 2002, has made or has caused 40  
to be made payments for ~~the~~ a capital investment project, 41  
including payments made by an unrelated third party entity as a 42  
result of a lease of not less than twenty years in term, of either 43  
of the following: 44

~~(i)~~(I) At least two hundred million dollars in the aggregate 45  
at the project site during a period of three consecutive calendar 46

years including the calendar year that includes a day of the 47  
taxpayer's taxable year or tax period with respect to which the 48  
credit is granted; 49

~~(ii)~~(II) If the average wage of all full-time employment 50  
positions at the project site is greater than four hundred per 51  
cent of the federal minimum wage, at least one hundred million 52  
dollars in the aggregate at the project site during a period of 53  
three consecutive calendar years including the calendar year that 54  
includes a day of the taxpayer's taxable year or tax period with 55  
respect to which the credit is granted. 56

~~(e)~~(iii) Is engaged at the project site primarily as a 57  
manufacturer or is providing significant corporate administrative 58  
functions. If the investment under division (A)(2)(b) of this 59  
section was made by a third party entity as a result of a lease of 60  
not less than twenty years in term, the project must include 61  
headquarters operations that are part of a mixed use development 62  
that includes at least two of the following: office, hotel, 63  
research and development, or retail facilities. 64

~~(d)~~(iv) Has had a capital investment project reviewed and 65  
approved by the tax credit authority as provided in divisions (C), 66  
(D), and (E) of this section. 67

(3) "Full-time employment position" means a position of 68  
employment for consideration for at least an average of 69  
thirty-five hours a week that has been filled for at least one 70  
hundred eighty days immediately preceding the filing of an 71  
application under this section and for at least one hundred eighty 72  
days during each taxable year or each calendar year that includes 73  
a tax period with respect to which the credit is granted, or is 74  
employed in such position for consideration for such time, but is 75  
on active duty reserve or Ohio national guard service. 76

(4) "Manufacturer" has the same meaning as in section 77

5739.011 of the Revised Code.	78
(5) "Project site" means an integrated complex of facilities in this state, as specified by the tax credit authority under this section, within a fifteen-mile radius where a taxpayer is primarily operating as an eligible business.	79 80 81 82
(6) "Applicable corporation" means a corporation satisfying all of the following:	83 84
(a)(i) For the entire taxable year immediately preceding the tax year, the corporation develops software applications primarily to provide telecommunication billing and information services through outsourcing or licensing to domestic or international customers.	85 86 87 88 89
(ii) Sales and licensing of software generated at least six hundred million dollars in revenue during the taxable year immediately preceding the tax year the corporation is first entitled to claim the credit provided under division (B) of this section.	90 91 92 93 94
(b) For the entire taxable year immediately preceding the tax year, the corporation or one or more of its related members provides customer or employee care and technical support for clients through one or more contact centers within this state, and the corporation and its related members together have a daily average, based on a three-hundred-sixty-five-day year, of at least five hundred thousand successful customer contacts through one or more of their contact centers, wherever located.	95 96 97 98 99 100 101 102
(c) The corporation is eligible for the credit under division (B) of this section for the tax year.	103 104
(7) "Related member" has the same meaning as in section 5733.042 of the Revised Code as that section existed on the effective date of its amendment by Am. Sub. H.B. 215 of the 122nd general assembly, September 29, 1997.	105 106 107 108

(8) "Successful customer contact" means a contact with an end user via telephone, including interactive voice recognition or similar means, where the contact culminates in a conversation or connection other than a busy signal or equipment busy.

(9) "Telecommunications" means all forms of telecommunications service as defined in section 5739.01 of the Revised Code, and includes services in wireless, wireline, cable, broadband, internet protocol, and satellite.

(10)(a) "Applicable difference" means the difference between the tax for the tax year under Chapter 5733. of the Revised Code applying the law in effect for that tax year, and the tax for that tax year if section 5733.042 of the Revised Code applied as that section existed on the effective date of its amendment by Am. Sub. H.B. 215 of the 122nd general assembly, September 29, 1997, subject to division (A)(10)(b) of this section.

(b) If the tax rate set forth in division (B) of section 5733.06 of the Revised Code for the tax year is less than eight and one-half per cent, the tax calculated under division (A)(10)(a) of this section shall be computed by substituting a tax rate of eight and one-half per cent for the rate set forth in division (B) of section 5733.06 of the Revised Code for the tax year.

(c) If the resulting difference is negative, the applicable tax difference for the tax year shall be zero.

(B) The tax credit authority created under section 122.17 of the Revised Code may grant tax credits under this section for the purpose of fostering job retention in this state. Upon application by an eligible business and upon consideration of the recommendation of the director of budget and management, tax commissioner, and director of development under division (C) of this section, the tax credit authority may grant to an eligible

business a nonrefundable credit against the tax imposed by section 140  
5733.06 or 5747.02 of the Revised Code for a period of up to 141  
fifteen taxable years, and against the tax levied by Chapter 5751. 142  
of the Revised Code for a period of up to fifteen calendar years 143  
provided, however, that if the project site is leased, the term of 144  
the tax credit cannot exceed the lesser of fifteen years or 145  
one-half the term of the lease, including any permitted renewal 146  
periods. The credit shall be in an amount not exceeding 147  
seventy-five per cent of the Ohio income tax withheld from the 148  
employees of the eligible business occupying full-time employment 149  
positions at the project site during the calendar year that 150  
includes the last day of such business' taxable year or tax period 151  
with respect to which the credit is granted. The amount of the 152  
credit shall not be based on the Ohio income tax withheld from 153  
full-time employees for a calendar year prior to the calendar year 154  
in which the minimum investment requirement referred to in 155  
division (A)(2)(b)(ii) of this section is completed if such 156  
requirement applies to the eligible business. The credit shall be 157  
claimed only for the taxable years or tax periods specified in the 158  
eligible business' agreement with the tax credit authority under 159  
division (E) of this section, but in no event shall the credit be 160  
claimed for a taxable year or tax period terminating before the 161  
date specified in the agreement. Any credit granted under this 162  
section against the tax imposed by section 5733.06 or 5747.02 of 163  
the Revised Code, to the extent not fully utilized against such 164  
tax for taxable years ending prior to 2008, shall automatically be 165  
converted without any action taken by the tax credit authority to 166  
a credit against the tax levied under Chapter 5751. of the Revised 167  
Code for tax periods beginning on or after July 1, 2008, provided 168  
that the person to whom the credit was granted is subject to such 169  
tax. The converted credit shall apply to those calendar years in 170  
which the remaining taxable years specified in the agreement end. 171  
172

The credit computed under this division is in addition to any 173  
credit allowed under division (M) of this section, which the tax 174  
credit authority may also include in the agreement. 175

Any unused portion of a tax credit may be carried forward for 176  
not more than three additional years after the year for which the 177  
credit is granted. 178

(C) A (1) A taxpayer that is an eligible business under 179  
division (A)(2)(a) of this section and that proposes to retain 180  
jobs in this state may apply to the tax credit authority to enter 181  
into an agreement for a tax credit under this section. 182

(2) A taxpayer that is an eligible business under division 183  
(A)(2)(b) of this section and that proposes a capital investment 184  
project to retain jobs in this state may apply to the tax credit 185  
authority to enter into an agreement for a tax credit under this 186  
section. ~~The~~ 187

(3) The director of development shall prescribe the form of 188  
the application. After receipt of an application, the authority 189  
shall forward copies of the application to the director of budget 190  
and management, the tax commissioner, and the director of 191  
development, each of whom shall review the application to 192  
determine the economic impact the proposed project would have or, 193  
for an eligible business applying under division (C)(1) of this 194  
section, the economic impact the retention of jobs would have, on 195  
the state and the affected political subdivisions ~~and~~. They shall 196  
submit a summary of their determinations and recommendations to 197  
the authority. 198

(D) Upon review of the determinations and recommendations 199  
described in division (C) of this section, the tax credit 200  
authority may enter into an agreement with the taxpayer for a 201  
credit under this section if the authority determines all of the 202  
following: 203

(1) ~~The~~ For a taxpayer that applied for the credit under 204  
division (C)(2) of this section, the taxpayer's capital investment 205  
project will result in the retention of full-time employment 206  
positions in this state. 207

(2) The taxpayer is economically sound and, if it applied for 208  
the credit under division (C)(2) of this section, it has the 209  
ability to complete the proposed capital investment project. 210

(3) The taxpayer intends to and has the ability to maintain 211  
operations at the project site for at least twice the term of the 212  
credit. 213

(4) Receiving the credit is a major factor in the taxpayer's 214  
decision to begin, continue with, or complete the project or, for 215  
a taxpayer that applied for the credit under division (C)(1) of 216  
this section, receiving the credit is a major factor in the 217  
taxpayer's decision to retain jobs in this state. 218

(5) ~~The~~ For a taxpayer that applied for the credit under 219  
division (C)(2) of this section, the political subdivisions in 220  
which the project is located have agreed to provide substantial 221  
financial support to the project. 222

(E) An agreement under this section shall include all of the 223  
following: 224

(1) ~~A~~ For a taxpayer that applied for the credit under 225  
division (C)(2) of this section, a detailed description of the 226  
project ~~that is the subject of the agreement~~, including the amount 227  
of the investment, the period over which the investment has been 228  
or is being made, and the number of full-time employment positions 229  
at the project site. 230

(2) The method of calculating the number of full-time 231  
employment positions as specified in division (A)(3) of this 232  
section. 233

(3) The term and percentage of the tax credit, and the first	234
year for which the credit may be claimed.	235
(4) A requirement that the taxpayer maintain operations at	236
the project site for at least twice the number of years as the	237
term of the credit.	238
(5) A requirement that the taxpayer retain a specified number	239
of full-time employment positions at the project site and within	240
this state for the term of the credit, including a requirement	241
that the taxpayer continue to employ at least one thousand	242
employees in full-time employment positions at the project site	243
during the entire term of any agreement, subject to division	244
(E)(7) of this section.	245
(6) A requirement that the taxpayer annually report to the	246
director of development the number of full-time employment	247
positions subject to the credit, the amount of tax withheld from	248
employees in those positions, the amount of the payments made for	249
the capital investment project, <u>if such a project is required</u>	250
<u>under the agreement</u> , and any other information the director needs	251
to perform the director's duties under this section.	252
(7) A requirement that the director of development annually	253
review the annual reports of the taxpayer to verify the	254
information reported under division (E)(6) of this section and	255
compliance with the agreement. Upon verification, the director	256
shall issue a certificate to the taxpayer stating that the	257
information has been verified and identifying the amount of the	258
credit for the taxable year. Unless otherwise specified by the tax	259
credit authority in a resolution and included as part of the	260
agreement, the director shall not issue a certificate for any year	261
in which the total number of filled full-time employment positions	262
for each day of the calendar year divided by three hundred	263
sixty-five is less than ninety per cent of the full-time	264
employment positions specified in division (E)(5) of this section.	265

In determining the number of full-time employment positions, no 266  
position shall be counted that is filled by an employee who is 267  
included in the calculation of a tax credit under section 122.17 268  
of the Revised Code. 269

(8)(a) A provision requiring that the taxpayer, except as 270  
otherwise provided in division (E)(8)(b) of this section, shall 271  
not relocate employment positions from elsewhere in this state to 272  
the project site that is the subject of the agreement for the 273  
lesser of five years from the date the agreement is entered into 274  
or the number of years the taxpayer is entitled to claim the 275  
credit. 276

(b) The taxpayer may relocate employment positions from 277  
elsewhere in this state to the project site that is the subject of 278  
the agreement if the director of development determines both of 279  
the following: 280

(i) That the site from which the employment positions would 281  
be relocated is inadequate to meet market and industry conditions, 282  
expansion plans, consolidation plans, or other business 283  
considerations affecting the taxpayer; 284

(ii) That the legislative authority of the county, township, 285  
or municipal corporation from which the employment positions would 286  
be relocated has been notified of the relocation. 287

For purposes of this section, the movement of an employment 288  
position from one political subdivision to another political 289  
subdivision shall be considered a relocation of an employment 290  
position unless the movement is confined to the project site. The 291  
transfer of an individual employee from one political subdivision 292  
to another political subdivision shall not be considered a 293  
relocation of an employment position as long as the individual's 294  
employment position in the first political subdivision is 295  
refilled. 296

(9) A waiver by the taxpayer of any limitations periods 297  
relating to assessments or adjustments resulting from the 298  
taxpayer's failure to comply with the agreement. 299

(F) If a taxpayer fails to meet or comply with any condition 300  
or requirement set forth in a tax credit agreement, the tax credit 301  
authority may amend the agreement to reduce the percentage or term 302  
of the credit. The reduction of the percentage or term shall take 303  
effect (1) in the taxable year immediately following the taxable 304  
year in which the authority amends the agreement or the director 305  
of development notifies the taxpayer in writing of such failure, 306  
or (2) in the first tax period beginning in the calendar year 307  
immediately following the calendar year in which the authority 308  
amends the agreement or the director notifies the taxpayer in 309  
writing of such failure. If the taxpayer fails to annually report 310  
any of the information required by division (E)(6) of this section 311  
within the time required by the director, the reduction of the 312  
percentage or term may take effect in the current taxable year. If 313  
the taxpayer relocates employment positions in violation of the 314  
provision required under division (D)(8)(a) of this section, the 315  
taxpayer shall not claim the tax credit under section 5733.0610 of 316  
the Revised Code for any tax years following the calendar year in 317  
which the relocation occurs, shall not claim the tax credit under 318  
section 5747.058 of the Revised Code for the taxable year in which 319  
the relocation occurs and any subsequent taxable years, and shall 320  
not claim the tax credit under division (A) of section 5751.50 of 321  
the Revised Code for the tax period in which the relocation occurs 322  
and any subsequent tax periods. 323

(G) Financial statements and other information submitted to 324  
the department of development or the tax credit authority by an 325  
applicant for or recipient of a tax credit under this section, and 326  
any information taken for any purpose from such statements or 327  
information, are not public records subject to section 149.43 of 328

the Revised Code. However, the chairperson of the authority may 329  
make use of the statements and other information for purposes of 330  
issuing public reports or in connection with court proceedings 331  
concerning tax credit agreements under this section. Upon the 332  
request of the tax commissioner, the chairperson of the authority 333  
shall provide to the commissioner any statement or other 334  
information submitted by an applicant for or recipient of a tax 335  
credit in connection with the credit. The commissioner shall 336  
preserve the confidentiality of the statement or other 337  
information. 338

(H) A taxpayer claiming a tax credit under this section shall 339  
submit to the tax commissioner a copy of the director of 340  
development's certificate of verification under division (E)(7) of 341  
this section with the taxpayer's tax report or return for the 342  
taxable year or for the calendar year that includes the tax 343  
period. Failure to submit a copy of the certificate with the 344  
report or return does not invalidate a claim for a credit if the 345  
taxpayer submits a copy of the certificate to the commissioner 346  
within sixty days after the commissioner requests it. 347

(I) For the purposes of this section, a taxpayer may include 348  
a partnership, a corporation that has made an election under 349  
subchapter S of chapter one of subtitle A of the Internal Revenue 350  
Code, or any other business entity through which income flows as a 351  
distributive share to its owners. A partnership, S-corporation, or 352  
other such business entity may elect to pass the credit received 353  
under this section through to the persons to whom the income or 354  
profit of the partnership, S-corporation, or other entity is 355  
distributed. The election shall be made on the annual report 356  
required under division (E)(6) of this section. The election 357  
applies to and is irrevocable for the credit for which the report 358  
is submitted. If the election is made, the credit shall be 359  
apportioned among those persons in the same proportions as those 360

in which the income or profit is distributed. 361

(J) If the director of development determines that a taxpayer 362  
that received a tax credit under this section is not complying 363  
with the requirement under division (E)(4) of this section, the 364  
director shall notify the tax credit authority of the 365  
noncompliance. After receiving such a notice, and after giving the 366  
taxpayer an opportunity to explain the noncompliance, the 367  
authority may terminate the agreement and require the taxpayer to 368  
refund to the state all or a portion of the credit claimed in 369  
previous years, as follows: 370

(1) If the taxpayer maintained operations at the project site 371  
for less than the term of the credit, the amount required to be 372  
refunded shall not exceed the amount of any tax credits previously 373  
allowed and received under this section. 374

(2) If the taxpayer maintained operations at the project site 375  
longer than the term of the credit but less than one and one-half 376  
times the term of the credit, the amount required to be refunded 377  
shall not exceed fifty per cent of the sum of any tax credits 378  
previously allowed and received under this section. 379

(3) If the taxpayer maintained operations at the project site 380  
for at least one and one-half times the term of the credit but 381  
less than twice the term of the credit, the amount required to be 382  
refunded shall not exceed twenty-five per cent of the sum of any 383  
tax credits previously allowed and received under this section. 384

In determining the portion of the credit to be refunded to 385  
this state, the authority shall consider the effect of market 386  
conditions on the taxpayer's project and whether the taxpayer 387  
continues to maintain other operations in this state. After making 388  
the determination, the authority shall certify the amount to be 389  
refunded to the tax commissioner. The commissioner shall make an 390  
assessment for that amount against the taxpayer under Chapter 391

5733., 5747., or 5751. of the Revised Code. The time limitations 392  
on assessments under those chapters do not apply to an assessment 393  
under this division, but the commissioner shall make the 394  
assessment within one year after the date the authority certifies 395  
to the commissioner the amount to be refunded. 396

If the director of development determines that a taxpayer 397  
that received a tax credit under this section has reduced the 398  
number of employees agreed to under division (E)(5) of this 399  
section by more than ten per cent, the director shall notify the 400  
tax credit authority of the noncompliance. After receiving such 401  
notice, and after providing to the taxpayer an opportunity to 402  
explain the noncompliance, the authority may amend the agreement 403  
to reduce the percentage or term of the tax credit. The reduction 404  
in the percentage or term shall take effect in the taxable year, 405  
or in the calendar year that includes the tax period, in which the 406  
authority amends the agreement. 407

(K) The director of development, after consultation with the 408  
tax commissioner and in accordance with Chapter 119. of the 409  
Revised Code, shall adopt rules necessary to implement this 410  
section. The rules may provide for recipients of tax credits under 411  
this section to be charged fees to cover administrative costs of 412  
the tax credit program. The fees collected shall be credited to 413  
the tax incentive programs operating fund created in section 414  
122.174 of the Revised Code. At the time the director gives public 415  
notice under division (A) of section 119.03 of the Revised Code of 416  
the adoption of the rules, the director shall submit copies of the 417  
proposed rules to the chairpersons of the standing committees on 418  
economic development in the senate and the house of 419  
representatives. 420

(L) On or before the thirty-first day of March of each year, 421  
the director of development shall submit a report to the governor, 422  
the president of the senate, and the speaker of the house of 423

representatives on the tax credit program under this section. The 424  
report shall include information on the number of agreements that 425  
were entered into under this section during the preceding calendar 426  
year, a description of the project or project site that is the 427  
subject of each such agreement, and an update on the status of 428  
projects under agreements entered into before the preceding 429  
calendar year. 430

(M)(1) A nonrefundable credit shall be allowed to an 431  
applicable corporation and its related members in an amount equal 432  
to the applicable difference. The credit is in addition to the 433  
credit granted to the corporation or related members under 434  
division (B) of this section. The credit is subject to divisions 435  
(B) to (E) and division (J) of this section. 436

(2) A person qualifying as an applicable corporation under 437  
this section for a tax year does not necessarily qualify as an 438  
applicable corporation for any other tax year. No person is 439  
entitled to the credit allowed under division (M) of this section 440  
for the tax year immediately following the taxable year during 441  
which the person fails to meet the requirements in divisions 442  
(A)(6)(a)(i) and (A)(6)(b) of this section. No person is entitled 443  
to the credit allowed under division (M) of this section for any 444  
tax year for which the person is not eligible for the credit 445  
provided under division (B) of this section. 446

**Section 2.** That existing section 122.171 of the Revised Code 447  
is hereby repealed. 448