

**As Introduced**

**129th General Assembly  
Regular Session  
2011-2012**

**H. B. No. 101**

**Representative Williams**

**Cosponsors: Representatives Fende, Pillich, Combs, Derickson, Gentile,  
Weddington, Goyal, Slesnick, Milkovich, Antonio**

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**A B I L L**

To amend sections 122.17 and 122.171 of the Revised 1  
Code to provide for a six-year trial period in 2  
which taxpayers may include a limited number of 3  
the taxpayer's employees who work from home and 4  
whose rate of pay is at least three times the 5  
federal minimum wage as employees employed in the 6  
project for purposes of the job creation and 7  
retention credits if the recipient of the credit 8  
provides a specified level of capital investment, 9  
and to require the Director of Development to 10  
issue a report at the end of the six-year period. 11

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

**Section 1.** That sections 122.17 and 122.171 of the Revised 12  
Code be amended to read as follows: 13

**Sec. 122.17.** (A) As used in this section: 14

(1) "Income tax revenue" means the total amount withheld 15  
under section 5747.06 of the Revised Code by the taxpayer during 16  
the taxable year, or during the calendar year that includes the 17  
tax period, from the compensation of each employee employed in the 18

project to the extent the employee's withholdings are not used to 19  
determine the credit under section 122.171 of the Revised Code. 20  
"Income tax revenue" excludes amounts withheld before the day the 21  
taxpayer becomes eligible for the credit. For taxable or calendar 22  
years ending before the beginning of the seventh year after the 23  
effective date of ....B. .... of the 129th general assembly, an 24  
"employee employed in the project" includes an employee whose 25  
services are performed primarily from the employee's residence in 26  
this state exclusively for the benefit of the project and whose 27  
rate of pay is at least three hundred per cent of the minimum 28  
hourly rate established by the "Fair Labor Standards Act of 1938," 29  
52 Stat. 1060, 29 U.S.C. 201, et seq., as amended, provided that 30  
the number of such employees whose tax withholdings are includable 31  
in "income tax revenue" shall not exceed ten per cent of the total 32  
number of employees employed by the taxpayer in the project. 33

(2) "Baseline income tax revenue" means income tax revenue 34  
except that the applicable withholding period is the twelve months 35  
immediately preceding the date the tax credit authority approves 36  
the taxpayer's application multiplied by the sum of one plus an 37  
annual pay increase factor to be determined by the tax credit 38  
authority. If the taxpayer becomes eligible for the credit after 39  
the first day of the taxpayer's taxable year or after the first 40  
day of the calendar year that includes the tax period, the 41  
taxpayer's baseline income tax revenue for the first such taxable 42  
or calendar year of credit eligibility shall be reduced in 43  
proportion to the number of days during the taxable or calendar 44  
year for which the taxpayer was not eligible for the credit. For 45  
subsequent taxable or calendar years, "baseline income tax 46  
revenue" equals the unreduced baseline income tax revenue for the 47  
preceding taxable or calendar year multiplied by the sum of one 48  
plus the pay increase factor. 49

(3) "Excess income tax revenue" means income tax revenue 50

minus baseline income tax revenue. 51

(B) The tax credit authority may make grants under this 52  
section to foster job creation in this state. Such a grant shall 53  
take the form of a refundable credit allowed against the tax 54  
imposed by section 5725.18, 5729.03, 5733.06, or 5747.02 or levied 55  
under Chapter 5751. of the Revised Code. The credit shall be 56  
claimed for the taxable years or tax periods specified in the 57  
taxpayer's agreement with the tax credit authority under division 58  
(D) of this section. With respect to taxes imposed under section 59  
5733.06 or 5747.02 or Chapter 5751. of the Revised Code, the 60  
credit shall be claimed in the order required under section 61  
5733.98, 5747.98, or 5751.98 of the Revised Code. The amount of 62  
the credit available for a taxable year or for a calendar year 63  
that includes a tax period equals the excess income tax revenue 64  
for that year multiplied by the percentage specified in the 65  
agreement with the tax credit authority. Any credit granted under 66  
this section against the tax imposed by section 5733.06 or 5747.02 67  
of the Revised Code, to the extent not fully utilized against such 68  
tax for taxable years ending prior to 2008, shall automatically be 69  
converted without any action taken by the tax credit authority to 70  
a credit against the tax levied under Chapter 5751. of the Revised 71  
Code for tax periods beginning on or after July 1, 2008, provided 72  
that the person to whom the credit was granted is subject to such 73  
tax. The converted credit shall apply to those calendar years in 74  
which the remaining taxable years specified in the agreement end. 75

(C) A taxpayer or potential taxpayer who proposes a project 76  
to create new jobs in this state may apply to the tax credit 77  
authority to enter into an agreement for a tax credit under this 78  
section. The director of development shall prescribe the form of 79  
the application. After receipt of an application, the authority 80  
may enter into an agreement with the taxpayer for a credit under 81  
this section if it determines all of the following: 82

(1) The taxpayer's project will increase payroll and income tax revenue;	83 84
(2) The taxpayer's project is economically sound and will benefit the people of this state by increasing opportunities for employment and strengthening the economy of this state;	85 86 87
(3) Receiving the tax credit is a major factor in the taxpayer's decision to go forward with the project;	88 89
<u>(4) If the taxpayer intends to include employees whose services are performed primarily at the employee's residence in the computation of income tax revenue, the taxpayer meets one of the capital investment project requirements described under division (A)(2)(b) of section 122.171 of the Revised Code as applicable to the taxpayer.</u>	90 91 92 93 94 95
(D) An agreement under this section shall include all of the following:	96 97
(1) A detailed description of the project that is the subject of the agreement;	98 99
(2) The term of the tax credit, which shall not exceed fifteen years, and the first taxable year, or first calendar year that includes a tax period, for which the credit may be claimed;	100 101 102
(3) A requirement that the taxpayer shall maintain operations at the project location for at least the greater of seven years or the term of the credit plus three years;	103 104 105
(4) The percentage, as determined by the tax credit authority, of excess income tax revenue that will be allowed as the amount of the credit for each taxable year or for each calendar year that includes a tax period;	106 107 108 109
(5) The pay increase factor to be applied to the taxpayer's baseline income tax revenue;	110 111
(6) A requirement that the taxpayer annually shall report to	112

the director of development employment, tax withholding, 113  
investment, and other information the director needs to perform 114  
the director's duties under this section; 115

(7) A requirement that the director of development annually 116  
review the information reported under division (D)(6) of this 117  
section and verify compliance with the agreement; if the taxpayer 118  
is in compliance, a requirement that the director issue a 119  
certificate to the taxpayer stating that the information has been 120  
verified and identifying the amount of the credit that may be 121  
claimed for the taxable or calendar year; 122

(8) A provision providing that the taxpayer may not relocate 123  
a substantial number of employment positions from elsewhere in 124  
this state to the project location unless the director of 125  
development determines that the legislative authority of the 126  
county, township, or municipal corporation from which the 127  
employment positions would be relocated has been notified by the 128  
taxpayer of the relocation. 129

For purposes of this section, the movement of an employment 130  
position from one political subdivision to another political 131  
subdivision shall be considered a relocation of an employment 132  
position unless the employment position in the first political 133  
subdivision is replaced. 134

(E) If a taxpayer fails to meet or comply with any condition 135  
or requirement set forth in a tax credit agreement, the tax credit 136  
authority may amend the agreement to reduce the percentage or term 137  
of the tax credit. The reduction of the percentage or term may 138  
take effect in the current taxable or calendar year. 139

(F) Projects that consist solely of point-of-final-purchase 140  
retail facilities are not eligible for a tax credit under this 141  
section. If a project consists of both point-of-final-purchase 142  
retail facilities and nonretail facilities, only the portion of 143

the project consisting of the nonretail facilities is eligible for 144  
a tax credit and only the excess income tax revenue from the 145  
nonretail facilities shall be considered when computing the amount 146  
of the tax credit. If a warehouse facility is part of a 147  
point-of-final-purchase retail facility and supplies only that 148  
facility, the warehouse facility is not eligible for a tax credit. 149  
Catalog distribution centers are not considered 150  
point-of-final-purchase retail facilities for the purposes of this 151  
division, and are eligible for tax credits under this section. 152

(G) Financial statements and other information submitted to 153  
the department of development or the tax credit authority by an 154  
applicant or recipient of a tax credit under this section, and any 155  
information taken for any purpose from such statements or 156  
information, are not public records subject to section 149.43 of 157  
the Revised Code. However, the chairperson of the authority may 158  
make use of the statements and other information for purposes of 159  
issuing public reports or in connection with court proceedings 160  
concerning tax credit agreements under this section. Upon the 161  
request of the tax commissioner or, if the applicant or recipient 162  
is an insurance company, upon the request of the superintendent of 163  
insurance, the chairperson of the authority shall provide to the 164  
commissioner or superintendent any statement or information 165  
submitted by an applicant or recipient of a tax credit in 166  
connection with the credit. The commissioner or superintendent 167  
shall preserve the confidentiality of the statement or 168  
information. 169

(H) A taxpayer claiming a credit under this section shall 170  
submit to the tax commissioner or, if the taxpayer is an insurance 171  
company, to the superintendent of insurance, a copy of the 172  
director of development's certificate of verification under 173  
division (D)(7) of this section with the taxpayer's tax report or 174  
return for the taxable year or for the calendar year that includes 175

the tax period. Failure to submit a copy of the certificate with 176  
the report or return does not invalidate a claim for a credit if 177  
the taxpayer submits a copy of the certificate to the commissioner 178  
or superintendent within sixty days after the commissioner or 179  
superintendent requests it. 180

(I) The director of development, after consultation with the 181  
tax commissioner and the superintendent of insurance and in 182  
accordance with Chapter 119. of the Revised Code, shall adopt 183  
rules necessary to implement this section. The rules may provide 184  
for recipients of tax credits under this section to be charged 185  
fees to cover administrative costs of the tax credit program. The 186  
fees collected shall be credited to the tax incentive programs 187  
operating fund created in section 122.174 of the Revised Code. At 188  
the time the director gives public notice under division (A) of 189  
section 119.03 of the Revised Code of the adoption of the rules, 190  
the director shall submit copies of the proposed rules to the 191  
chairpersons of the standing committees on economic development in 192  
the senate and the house of representatives. 193

(J) For the purposes of this section, a taxpayer may include 194  
a partnership, a corporation that has made an election under 195  
subchapter S of chapter one of subtitle A of the Internal Revenue 196  
Code, or any other business entity through which income flows as a 197  
distributive share to its owners. A partnership, S-corporation, or 198  
other such business entity may elect to pass the credit received 199  
under this section through to the persons to whom the income or 200  
profit of the partnership, S-corporation, or other entity is 201  
distributed. The election shall be made on the annual report 202  
required under division (D)(6) of this section. The election 203  
applies to and is irrevocable for the credit for which the report 204  
is submitted. If the election is made, the credit shall be 205  
apportioned among those persons in the same proportions as those 206  
in which the income or profit is distributed. 207

(K) If the director of development determines that a taxpayer who has received a credit under this section is not complying with the requirement under division (D)(3) of this section, the director shall notify the tax credit authority of the noncompliance. After receiving such a notice, and after giving the taxpayer an opportunity to explain the noncompliance, the tax credit authority may require the taxpayer to refund to this state a portion of the credit in accordance with the following:

(1) If the taxpayer maintained operations at the project location for a period less than or equal to the term of the credit, an amount not exceeding one hundred per cent of the sum of any credits allowed and received under this section;

(2) If the taxpayer maintained operations at the project location for a period longer than the term of the credit, but less than the greater of seven years or the term of the credit plus three years, an amount not exceeding seventy-five per cent of the sum of any credits allowed and received under this section.

In determining the portion of the tax credit to be refunded to this state, the tax credit authority shall consider the effect of market conditions on the taxpayer's project and whether the taxpayer continues to maintain other operations in this state. After making the determination, the authority shall certify the amount to be refunded to the tax commissioner or superintendent of insurance, as appropriate. If the amount is certified to the commissioner, the commissioner shall make an assessment for that amount against the taxpayer under Chapter 5733., 5747., or 5751. of the Revised Code. If the amount is certified to the superintendent, the superintendent shall make an assessment for that amount against the taxpayer under Chapter 5725. or 5729. of the Revised Code. The time limitations on assessments under those chapters do not apply to an assessment under this division, but the commissioner or superintendent, as appropriate, shall make the



assessment within one year after the date the authority certifies 240  
to the commissioner or superintendent the amount to be refunded. 241

(L) On or before the first day of August each year, the 242  
director of development shall submit a report to the governor, the 243  
president of the senate, and the speaker of the house of 244  
representatives on the tax credit program under this section. The 245  
report shall include information on the number of agreements that 246  
were entered into under this section during the preceding calendar 247  
year, a description of the project that is the subject of each 248  
such agreement, and an update on the status of projects under 249  
agreements entered into before the preceding calendar year. 250

(M) There is hereby created the tax credit authority, which 251  
consists of the director of development and four other members 252  
appointed as follows: the governor, the president of the senate, 253  
and the speaker of the house of representatives each shall appoint 254  
one member who shall be a specialist in economic development; the 255  
governor also shall appoint a member who is a specialist in 256  
taxation. Of the initial appointees, the members appointed by the 257  
governor shall serve a term of two years; the members appointed by 258  
the president of the senate and the speaker of the house of 259  
representatives shall serve a term of four years. Thereafter, 260  
terms of office shall be for four years. Initial appointments to 261  
the authority shall be made within thirty days after January 13, 262  
1993. Each member shall serve on the authority until the end of 263  
the term for which the member was appointed. Vacancies shall be 264  
filled in the same manner provided for original appointments. Any 265  
member appointed to fill a vacancy occurring prior to the 266  
expiration of the term for which the member's predecessor was 267  
appointed shall hold office for the remainder of that term. 268  
Members may be reappointed to the authority. Members of the 269  
authority shall receive their necessary and actual expenses while 270  
engaged in the business of the authority. The director of 271

development shall serve as chairperson of the authority, and the 272  
members annually shall elect a vice-chairperson from among 273  
themselves. Three members of the authority constitute a quorum to 274  
transact and vote on the business of the authority. The majority 275  
vote of the membership of the authority is necessary to approve 276  
any such business, including the election of the vice-chairperson. 277

The director of development may appoint a professional 278  
employee of the department of development to serve as the 279  
director's substitute at a meeting of the authority. The director 280  
shall make the appointment in writing. In the absence of the 281  
director from a meeting of the authority, the appointed substitute 282  
shall serve as chairperson. In the absence of both the director 283  
and the director's substitute from a meeting, the vice-chairperson 284  
shall serve as chairperson. 285

(N) For purposes of the credits granted by this section 286  
against the taxes imposed under sections 5725.18 and 5729.03 of 287  
the Revised Code, "taxable year" means the period covered by the 288  
taxpayer's annual statement to the superintendent of insurance. 289

(O) On or before the first day of January of the seventh 290  
calendar year following the year in which ....B. .... of the 129th 291  
general assembly became effective, the director of development 292  
shall submit a report to the governor, the president of the 293  
senate, and the speaker of the house of representatives on the 294  
effect of agreements entered into under this section by the tax 295  
credit authority in which the taxpayer included employees whose 296  
services were performed primarily from the employee's residence in 297  
the computation of income tax revenue. The report shall include 298  
information on the number of such agreements that were entered 299  
into in the preceding six years, the number of employees whose 300  
services are performed primarily from the employee's residence 301  
compared to the total number of employees covered by such 302  
agreements, and a description of the projects that were the 303

subjects of such agreements. 304

**Sec. 122.171.** (A) As used in this section: 305

(1) "Capital investment project" means a plan of investment 306  
at a project site for the acquisition, construction, renovation, 307  
or repair of buildings, machinery, or equipment, or for 308  
capitalized costs of basic research and new product development 309  
determined in accordance with generally accepted accounting 310  
principles, but does not include any of the following: 311

(a) Payments made for the acquisition of personal property 312  
through operating leases; 313

(b) Project costs paid before January 1, 2002; 314

(c) Payments made to a related member as defined in section 315  
5733.042 of the Revised Code or to a consolidated elected taxpayer 316  
or a combined taxpayer as defined in section 5751.01 of the 317  
Revised Code. 318

(2) "Eligible business" means a taxpayer and its related 319  
members with Ohio operations satisfying all of the following: 320

(a) The taxpayer employs at least five hundred full-time 321  
equivalent employees at the time the tax credit authority grants 322  
the tax credit under this section; 323

(b) The taxpayer makes or causes to be made payments for the 324  
capital investment project of either of the following: 325

(i) If the taxpayer is engaged at the project site primarily 326  
as a manufacturer, at least fifty million dollars in the aggregate 327  
at the project site during a period of three consecutive calendar 328  
years, including the calendar year that includes a day of the 329  
taxpayer's taxable year or tax period with respect to which the 330  
credit is granted; 331

(ii) If the taxpayer is engaged at the project site primarily 332

in significant corporate administrative functions, as defined by 333  
the director of development by rule, at least twenty million 334  
dollars in the aggregate at the project site during a period of 335  
three consecutive calendar years including the calendar year that 336  
includes a day of the taxpayer's taxable year or tax period with 337  
respect to which the credit is granted. 338

(c) The taxpayer had a capital investment project reviewed 339  
and approved by the tax credit authority as provided in divisions 340  
(C), (D), and (E) of this section. 341

(3) "Full-time equivalent employees" means the quotient 342  
obtained by dividing the total number of hours for which employees 343  
were compensated for employment in the project by two thousand 344  
eighty. "Full-time equivalent employees" shall exclude hours that 345  
are counted for a credit under section 122.17 of the Revised Code. 346

(4) "Income tax revenue" means the total amount withheld 347  
under section 5747.06 of the Revised Code by the taxpayer during 348  
the taxable year, or during the calendar year that includes the 349  
tax period, from the compensation of all employees employed in the 350  
project whose hours of compensation are included in calculating 351  
the number of full-time equivalent employees. For taxable or 352  
calendar years ending before the beginning of the seventh year 353  
after the effective date of ....B. .... of the 129th general 354  
assembly, an "employee employed in the project" includes an 355  
employee whose services are performed primarily from the 356  
employee's residence in this state exclusively for the benefit of 357  
the project and whose rate of pay is at least three hundred per 358  
cent of the minimum hourly rate established by the "Fair Labor 359  
Standards Act of 1938," 52 Stat. 1060, 29 U.S.C. 201, et seq., as 360  
amended, provided that the number of such employees whose tax 361  
withholdings are includable in "income tax revenue" shall not 362  
exceed ten per cent of the total number of employees employed by 363  
the taxpayer in the project. 364

(5) "Manufacturer" has the same meaning as in section 365  
5739.011 of the Revised Code. 366

(6) "Project site" means an integrated complex of facilities 367  
in this state, as specified by the tax credit authority under this 368  
section, within a fifteen-mile radius where a taxpayer is 369  
primarily operating as an eligible business. 370

(7) "Related member" has the same meaning as in section 371  
5733.042 of the Revised Code as that section existed on the 372  
effective date of its amendment by Am. Sub. H.B. 215 of the 122nd 373  
general assembly, September 29, 1997. 374

(8) "Taxable year" includes, in the case of a domestic or 375  
foreign insurance company, the calendar year ending on the 376  
thirty-first day of December preceding the day the superintendent 377  
of insurance is required to certify to the treasurer of state 378  
under section 5725.20 or 5729.05 of the Revised Code the amount of 379  
taxes due from insurance companies. 380

(B) The tax credit authority created under section 122.17 of 381  
the Revised Code may grant tax credits under this section for the 382  
purpose of fostering job retention in this state. Upon application 383  
by an eligible business and upon consideration of the 384  
recommendation of the director of budget and management, tax 385  
commissioner, the superintendent of insurance in the case of an 386  
insurance company, and director of development under division (C) 387  
of this section, the tax credit authority may grant to an eligible 388  
business a nonrefundable credit against the tax imposed by section 389  
5725.18, 5729.03, 5733.06, or 5747.02 of the Revised Code for a 390  
period up to fifteen taxable years and against the tax levied by 391  
Chapter 5751. of the Revised Code for a period of up to fifteen 392  
calendar years. The credit amount for a taxable year or a calendar 393  
year that includes the tax period for which a credit may be 394  
claimed equals the income tax revenue for that year multiplied by 395  
the percentage specified in the agreement with the tax credit 396

authority. The percentage may not exceed seventy-five per cent. 397  
The credit shall be claimed in the order required under section 398  
5725.98, 5729.98, 5733.98, or 5747.98 of the Revised Code. In 399  
determining the percentage and term of the credit, the tax credit 400  
authority shall consider both the number of full-time equivalent 401  
employees and the value of the capital investment project. The 402  
credit amount may not be based on the income tax revenue for a 403  
calendar year before the calendar year in which the tax credit 404  
authority specifies the tax credit is to begin, and the credit 405  
shall be claimed only for the taxable years or tax periods 406  
specified in the eligible business' agreement with the tax credit 407  
authority. In no event shall the credit be claimed for a taxable 408  
year or tax period terminating before the date specified in the 409  
agreement. Any credit granted under this section against the tax 410  
imposed by section 5733.06 or 5747.02 of the Revised Code, to the 411  
extent not fully utilized against such tax for taxable years 412  
ending prior to 2008, shall automatically be converted without any 413  
action taken by the tax credit authority to a credit against the 414  
tax levied under Chapter 5751. of the Revised Code for tax periods 415  
beginning on or after July 1, 2008, provided that the person to 416  
whom the credit was granted is subject to such tax. The converted 417  
credit shall apply to those calendar years in which the remaining 418  
taxable years specified in the agreement end. 419

Any unused portion of a tax credit may be carried forward for 420  
not more than three additional years after the year for which the 421  
credit is granted. 422

(C) A taxpayer that proposes a capital investment project to 423  
retain jobs in this state may apply to the tax credit authority to 424  
enter into an agreement for a tax credit under this section. The 425  
director of development shall prescribe the form of the 426  
application. After receipt of an application, the authority shall 427  
forward copies of the application to the director of budget and 428

management, the tax commissioner, the superintendent of insurance 429  
in the case of an insurance company, and the director of 430  
development, each of whom shall review the application to 431  
determine the economic impact the proposed project would have on 432  
the state and the affected political subdivisions and shall submit 433  
a summary of their determinations and recommendations to the 434  
authority. 435

(D) Upon review of the determinations and recommendations 436  
described in division (C) of this section, the tax credit 437  
authority may enter into an agreement with the taxpayer for a 438  
credit under this section if the authority determines all of the 439  
following: 440

(1) The taxpayer's capital investment project will result in 441  
the retention of employment in this state. 442

(2) The taxpayer is economically sound and has the ability to 443  
complete the proposed capital investment project. 444

(3) The taxpayer intends to and has the ability to maintain 445  
operations at the project site for at least the greater of (a) the 446  
term of the credit plus three years, or (b) seven years. 447

(4) Receiving the credit is a major factor in the taxpayer's 448  
decision to begin, continue with, or complete the project. 449

(E) An agreement under this section shall include all of the 450  
following: 451

(1) A detailed description of the project that is the subject 452  
of the agreement, including the amount of the investment, the 453  
period over which the investment has been or is being made, the 454  
number of full-time equivalent employees at the project site, and 455  
the anticipated income tax revenue to be generated. 456

(2) The term of the credit, the percentage of the tax credit, 457  
the maximum annual value of tax credits that may be allowed each 458

year, and the first year for which the credit may be claimed. 459

(3) A requirement that the taxpayer maintain operations at 460  
the project site for at least the greater of (a) the term of the 461  
credit plus three years, or (b) seven years. 462

(4) A requirement that the taxpayer retain a specified number 463  
of full-time equivalent employees at the project site and within 464  
this state for the term of the credit, including a requirement 465  
that the taxpayer continue to employ at least five hundred 466  
full-time equivalent employees during the entire term of the 467  
agreement. 468

(5) A requirement that the taxpayer annually report to the 469  
director of development employment, tax withholding, capital 470  
investment, and other information the director needs to perform 471  
the director's duties under this section. 472

(6) A requirement that the director of development annually 473  
review the annual reports of the taxpayer to verify the 474  
information reported under division (E)(5) of this section and 475  
compliance with the agreement. Upon verification, the director 476  
shall issue a certificate to the taxpayer stating that the 477  
information has been verified and identifying the amount of the 478  
credit for the taxable year or calendar year that includes the tax 479  
period. In determining the number of full-time equivalent 480  
employees, no position shall be counted that is filled by an 481  
employee who is included in the calculation of a tax credit under 482  
section 122.17 of the Revised Code. 483

(7) A provision providing that the taxpayer may not relocate 484  
a substantial number of employment positions from elsewhere in 485  
this state to the project site unless the director of development 486  
determines that the taxpayer notified the legislative authority of 487  
the county, township, or municipal corporation from which the 488  
employment positions would be relocated. 489



For purposes of this section, the movement of an employment 490  
position from one political subdivision to another political 491  
subdivision shall be considered a relocation of an employment 492  
position unless the movement is confined to the project site. The 493  
transfer of an employment position from one political subdivision 494  
to another political subdivision shall not be considered a 495  
relocation of an employment position if the employment position in 496  
the first political subdivision is replaced by another employment 497  
position. 498

(8) A waiver by the taxpayer of any limitations periods 499  
relating to assessments or adjustments resulting from the 500  
taxpayer's failure to comply with the agreement. 501

(F) If a taxpayer fails to meet or comply with any condition 502  
or requirement set forth in a tax credit agreement, the tax credit 503  
authority may amend the agreement to reduce the percentage or term 504  
of the credit. The reduction of the percentage or term may take 505  
effect in the current taxable or calendar year. 506

(G) Financial statements and other information submitted to 507  
the department of development or the tax credit authority by an 508  
applicant for or recipient of a tax credit under this section, and 509  
any information taken for any purpose from such statements or 510  
information, are not public records subject to section 149.43 of 511  
the Revised Code. However, the chairperson of the authority may 512  
make use of the statements and other information for purposes of 513  
issuing public reports or in connection with court proceedings 514  
concerning tax credit agreements under this section. Upon the 515  
request of the tax commissioner, or the superintendent of 516  
insurance in the case of an insurance company, the chairperson of 517  
the authority shall provide to the commissioner or superintendent 518  
any statement or other information submitted by an applicant for 519  
or recipient of a tax credit in connection with the credit. The 520  
commissioner or superintendent shall preserve the confidentiality 521

of the statement or other information. 522

(H) A taxpayer claiming a tax credit under this section shall 523  
submit to the tax commissioner or, in the case of an insurance 524  
company, to the superintendent of insurance, a copy of the 525  
director of development's certificate of verification under 526  
division (E)(6) of this section with the taxpayer's tax report or 527  
return for the taxable year or for the calendar year that includes 528  
the tax period. Failure to submit a copy of the certificate with 529  
the report or return does not invalidate a claim for a credit if 530  
the taxpayer submits a copy of the certificate to the commissioner 531  
or superintendent within sixty days after the commissioner or 532  
superintendent requests it. 533

(I) For the purposes of this section, a taxpayer may include 534  
a partnership, a corporation that has made an election under 535  
subchapter S of chapter one of subtitle A of the Internal Revenue 536  
Code, or any other business entity through which income flows as a 537  
distributive share to its owners. A partnership, S-corporation, or 538  
other such business entity may elect to pass the credit received 539  
under this section through to the persons to whom the income or 540  
profit of the partnership, S-corporation, or other entity is 541  
distributed. The election shall be made on the annual report 542  
required under division (E)(5) of this section. The election 543  
applies to and is irrevocable for the credit for which the report 544  
is submitted. If the election is made, the credit shall be 545  
apportioned among those persons in the same proportions as those 546  
in which the income or profit is distributed. 547

(J) If the director of development determines that a taxpayer 548  
that received a tax credit under this section is not complying 549  
with the requirement under division (E)(3) of this section, the 550  
director shall notify the tax credit authority of the 551  
noncompliance. After receiving such a notice, and after giving the 552  
taxpayer an opportunity to explain the noncompliance, the 553

authority may terminate the agreement and require the taxpayer to 554  
refund to the state all or a portion of the credit claimed in 555  
previous years, as follows: 556

(1) If the taxpayer maintained operations at the project site 557  
for less than or equal to the term of the credit, an amount not to 558  
exceed one hundred per cent of the sum of any tax credits allowed 559  
and received under this section. 560

(2) If the taxpayer maintained operations at the project site 561  
longer than the term of the credit, but less than the greater of 562  
(a) the term of the credit plus three years, or (b) seven years, 563  
the amount required to be refunded shall not exceed seventy-five 564  
per cent of the sum of any tax credits allowed and received under 565  
this section. 566

In determining the portion of the credit to be refunded to 567  
this state, the authority shall consider the effect of market 568  
conditions on the taxpayer's project and whether the taxpayer 569  
continues to maintain other operations in this state. After making 570  
the determination, the authority shall certify the amount to be 571  
refunded to the tax commissioner or the superintendent of 572  
insurance. If the taxpayer is not an insurance company, the 573  
commissioner shall make an assessment for that amount against the 574  
taxpayer under Chapter 5733., 5747., or 5751. of the Revised Code. 575  
If the taxpayer is an insurance company, the superintendent of 576  
insurance shall make an assessment under section 5725.222 or 577  
5729.102 of the Revised Code. The time limitations on assessments 578  
under those chapters and sections do not apply to an assessment 579  
under this division, but the commissioner or superintendent shall 580  
make the assessment within one year after the date the authority 581  
certifies to the commissioner or superintendent the amount to be 582  
refunded. 583

(K) The director of development, after consultation with the 584  
tax commissioner and the superintendent of insurance and in 585

accordance with Chapter 119. of the Revised Code, shall adopt 586  
rules necessary to implement this section. The rules may provide 587  
for recipients of tax credits under this section to be charged 588  
fees to cover administrative costs of the tax credit program. The 589  
fees collected shall be credited to the tax incentive programs 590  
operating fund created in section 122.174 of the Revised Code. At 591  
the time the director gives public notice under division (A) of 592  
section 119.03 of the Revised Code of the adoption of the rules, 593  
the director shall submit copies of the proposed rules to the 594  
chairpersons of the standing committees on economic development in 595  
the senate and the house of representatives. 596

(L) On or before the first day of August of each year, the 597  
director of development shall submit a report to the governor, the 598  
president of the senate, and the speaker of the house of 599  
representatives on the tax credit program under this section. The 600  
report shall include information on the number of agreements that 601  
were entered into under this section during the preceding calendar 602  
year, a description of the project that is the subject of each 603  
such agreement, and an update on the status of projects under 604  
agreements entered into before the preceding calendar year. 605

(M) The aggregate amount of tax credits issued under this 606  
section during any calendar year for capital investment projects 607  
reviewed and approved by the tax credit authority may not exceed 608  
the following amounts: 609

(1) For 2010, thirteen million dollars; 610

(2) For 2011 through 2023, the amount of the limit for the 611  
preceding calendar year plus thirteen million dollars; 612

(3) For 2024 and each year thereafter, one hundred 613  
ninety-five million dollars. 614

The foregoing annual limitations do not apply to credits for 615  
capital investment projects approved by the tax credit authority 616

before July 1, 2009. 617

(N) On or before the first day of January of the seventh 618  
calendar year following the year in which ....B. .... of the 129th 619  
general assembly became effective, the director of development 620  
shall submit a report to the governor, the president of the 621  
senate, and the speaker of the house of representatives on the 622  
effect of agreements entered into under this section by the tax 623  
credit authority in which the taxpayer included employees whose 624  
services were performed primarily from the employee's residence in 625  
the computation of income tax revenue. The report shall include 626  
information on the number of such agreements that were entered 627  
into in the preceding six years, the number of employees whose 628  
services are performed primarily from the employee's residence 629  
compared to the total number of employees covered by such 630  
agreements, and a description of the projects that were the 631  
subjects of such agreements. 632

**Section 2.** That existing sections 122.17 and 122.171 of the 633  
Revised Code are hereby repealed. 634