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Representatives Beck, Gonzales

Cosponsors: Representatives Amstutz, Antonio, Baker, Barnes, Blair, Brenner, Bubp, Buchy, Carney, Celebrezze, Celeste, Clyde, Combs, Dovilla, Driehaus, Duffey, Fedor, Garland, Goyal, Grossman, Hackett, Hall, Henne, Huffman, Luckie, Mallory, Martin, McClain, Newbold, O'Brien, Phillips, Ruhl, Sears, Sprague, Stautberg, Stinziano, Szollosi, Terhar Speaker Batchelder

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A B I L L

To amend sections 121.22, 122.15, 122.151, 122.152, 1
122.153, 122.154, 122.28, 122.30 to 122.36, 2
150.03, 150.05, 150.07, 150.10, and 184.02 and to 3
repeal section 122.29 of the Revised Code to make 4
various changes to the administration of the 5
investment tax credit and the venture capital loan 6
loss tax credit, including the increase of the 7
maximum amount of the investment tax credit and 8
the venture capital loan loss tax credit and the 9
elimination of the Industrial Technology and 10
Enterprise Advisory Councils. 11

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

Section 1. That sections 121.22, 122.15, 122.151, 122.152, 12
122.153, 122.154, 122.28, 122.30, 122.31, 122.32, 122.33, 122.34, 13
122.35, 122.36, 150.03, 150.05, 150.07, 150.10, and 184.02 of the 14
Revised Code be amended to read as follows: 15

Sec. 121.22. (A) This section shall be liberally construed to 16
require public officials to take official action and to conduct 17
all deliberations upon official business only in open meetings 18
unless the subject matter is specifically excepted by law. 19

(B) As used in this section: 20

(1) "Public body" means any of the following: 21

(a) Any board, commission, committee, council, or similar 22
decision-making body of a state agency, institution, or authority, 23
and any legislative authority or board, commission, committee, 24
council, agency, authority, or similar decision-making body of any 25
county, township, municipal corporation, school district, or other 26
political subdivision or local public institution; 27

(b) Any committee or subcommittee of a body described in 28
division (B)(1)(a) of this section; 29

(c) A court of jurisdiction of a sanitary district organized 30
wholly for the purpose of providing a water supply for domestic, 31
municipal, and public use when meeting for the purpose of the 32
appointment, removal, or reappointment of a member of the board of 33
directors of such a district pursuant to section 6115.10 of the 34
Revised Code, if applicable, or for any other matter related to 35
such a district other than litigation involving the district. As 36
used in division (B)(1)(c) of this section, "court of 37
jurisdiction" has the same meaning as "court" in section 6115.01 38
of the Revised Code. 39

(2) "Meeting" means any prearranged discussion of the public 40
business of the public body by a majority of its members. 41

(3) "Regulated individual" means either of the following: 42

(a) A student in a state or local public educational 43
institution; 44

(b) A person who is, voluntarily or involuntarily, an inmate, 45

patient, or resident of a state or local institution because of 46
criminal behavior, mental illness or retardation, disease, 47
disability, age, or other condition requiring custodial care. 48

(4) "Public office" has the same meaning as in section 49
149.011 of the Revised Code. 50

(C) All meetings of any public body are declared to be public 51
meetings open to the public at all times. A member of a public 52
body shall be present in person at a meeting open to the public to 53
be considered present or to vote at the meeting and for purposes 54
of determining whether a quorum is present at the meeting. 55

The minutes of a regular or special meeting of any public 56
body shall be promptly prepared, filed, and maintained and shall 57
be open to public inspection. The minutes need only reflect the 58
general subject matter of discussions in executive sessions 59
authorized under division (G) or (J) of this section. 60

(D) This section does not apply to any of the following: 61

(1) A grand jury; 62

(2) An audit conference conducted by the auditor of state or 63
independent certified public accountants with officials of the 64
public office that is the subject of the audit; 65

(3) The adult parole authority when its hearings are 66
conducted at a correctional institution for the sole purpose of 67
interviewing inmates to determine parole or pardon; 68

(4) The organized crime investigations commission established 69
under section 177.01 of the Revised Code; 70

(5) Meetings of a child fatality review board established 71
under section 307.621 of the Revised Code and meetings conducted 72
pursuant to sections 5153.171 to 5153.173 of the Revised Code; 73

(6) The state medical board when determining whether to 74
suspend a certificate without a prior hearing pursuant to division 75

(G) of either section 4730.25 or 4731.22 of the Revised Code;	76
(7) The board of nursing when determining whether to suspend a license or certificate without a prior hearing pursuant to division (B) of section 4723.281 of the Revised Code;	77 78 79
(8) The state board of pharmacy when determining whether to suspend a license without a prior hearing pursuant to division (D) of section 4729.16 of the Revised Code;	80 81 82
(9) The state chiropractic board when determining whether to suspend a license without a hearing pursuant to section 4734.37 of the Revised Code;	83 84 85
(10) The executive committee of the emergency response commission when determining whether to issue an enforcement order or request that a civil action, civil penalty action, or criminal action be brought to enforce Chapter 3750. of the Revised Code;	86 87 88 89
(11) The board of directors of the nonprofit corporation formed under section 187.01 of the Revised Code or any committee thereof, and the board of directors of any subsidiary of that corporation or a committee thereof;	90 91 92 93
(12) An audit conference conducted by the audit staff of the department of job and family services with officials of the public office that is the subject of that audit under section 5101.37 of the Revised Code.	94 95 96 97
(E) The controlling board, the development financing advisory council, the industrial technology and enterprise advisory council <u>third frontier commission</u> , the tax credit authority, or the minority development financing advisory board, when meeting to consider granting assistance pursuant to Chapter 122. or 166. of the Revised Code, in order to protect the interest of the applicant or the possible investment of public funds, by unanimous vote of all board, council, <u>commission</u> , or authority members present, may close the meeting during consideration of the	98 99 100 101 102 103 104 105 106

following information confidentially received by the authority,	107
council, <u>commission</u> , or board from the applicant:	108
(1) Marketing plans;	109
(2) Specific business strategy;	110
(3) Production techniques and trade secrets;	111
(4) Financial projections;	112
(5) Personal financial statements of the applicant or members	113
of the applicant's immediate family, including, but not limited	114
to, tax records or other similar information not open to public	115
inspection.	116
The vote by the authority, council, <u>commission</u> , or board to	117
accept or reject the application, as well as all proceedings of	118
the authority, council, <u>commission</u> , or board not subject to this	119
division, shall be open to the public and governed by this	120
section.	121
(F) Every public body, by rule, shall establish a reasonable	122
method whereby any person may determine the time and place of all	123
regularly scheduled meetings and the time, place, and purpose of	124
all special meetings. A public body shall not hold a special	125
meeting unless it gives at least twenty-four hours' advance notice	126
to the news media that have requested notification, except in the	127
event of an emergency requiring immediate official action. In the	128
event of an emergency, the member or members calling the meeting	129
shall notify the news media that have requested notification	130
immediately of the time, place, and purpose of the meeting.	131
The rule shall provide that any person, upon request and	132
payment of a reasonable fee, may obtain reasonable advance	133
notification of all meetings at which any specific type of public	134
business is to be discussed. Provisions for advance notification	135
may include, but are not limited to, mailing the agenda of	136

meetings to all subscribers on a mailing list or mailing notices 137
in self-addressed, stamped envelopes provided by the person. 138

(G) Except as provided in division (J) of this section, the 139
members of a public body may hold an executive session only after 140
a majority of a quorum of the public body determines, by a roll 141
call vote, to hold an executive session and only at a regular or 142
special meeting for the sole purpose of the consideration of any 143
of the following matters: 144

(1) To consider the appointment, employment, dismissal, 145
discipline, promotion, demotion, or compensation of a public 146
employee or official, or the investigation of charges or 147
complaints against a public employee, official, licensee, or 148
regulated individual, unless the public employee, official, 149
licensee, or regulated individual requests a public hearing. 150
Except as otherwise provided by law, no public body shall hold an 151
executive session for the discipline of an elected official for 152
conduct related to the performance of the elected official's 153
official duties or for the elected official's removal from office. 154
If a public body holds an executive session pursuant to division 155
(G)(1) of this section, the motion and vote to hold that executive 156
session shall state which one or more of the approved purposes 157
listed in division (G)(1) of this section are the purposes for 158
which the executive session is to be held, but need not include 159
the name of any person to be considered at the meeting. 160

(2) To consider the purchase of property for public purposes, 161
or for the sale of property at competitive bidding, if premature 162
disclosure of information would give an unfair competitive or 163
bargaining advantage to a person whose personal, private interest 164
is adverse to the general public interest. No member of a public 165
body shall use division (G)(2) of this section as a subterfuge for 166
providing covert information to prospective buyers or sellers. A 167
purchase or sale of public property is void if the seller or buyer 168

of the public property has received covert information from a 169
member of a public body that has not been disclosed to the general 170
public in sufficient time for other prospective buyers and sellers 171
to prepare and submit offers. 172

If the minutes of the public body show that all meetings and 173
deliberations of the public body have been conducted in compliance 174
with this section, any instrument executed by the public body 175
purporting to convey, lease, or otherwise dispose of any right, 176
title, or interest in any public property shall be conclusively 177
presumed to have been executed in compliance with this section 178
insofar as title or other interest of any bona fide purchasers, 179
lessees, or transferees of the property is concerned. 180

(3) Conferences with an attorney for the public body 181
concerning disputes involving the public body that are the subject 182
of pending or imminent court action; 183

(4) Preparing for, conducting, or reviewing negotiations or 184
bargaining sessions with public employees concerning their 185
compensation or other terms and conditions of their employment; 186

(5) Matters required to be kept confidential by federal law 187
or regulations or state statutes; 188

(6) Details relative to the security arrangements and 189
emergency response protocols for a public body or a public office, 190
if disclosure of the matters discussed could reasonably be 191
expected to jeopardize the security of the public body or public 192
office; 193

(7) In the case of a county hospital operated pursuant to 194
Chapter 339. of the Revised Code, a joint township hospital 195
operated pursuant to Chapter 513. of the Revised Code, or a 196
municipal hospital operated pursuant to Chapter 749. of the 197
Revised Code, to consider trade secrets, as defined in section 198
1333.61 of the Revised Code. 199

If a public body holds an executive session to consider any 200
of the matters listed in divisions (G)(2) to (7) of this section, 201
the motion and vote to hold that executive session shall state 202
which one or more of the approved matters listed in those 203
divisions are to be considered at the executive session. 204

A public body specified in division (B)(1)(c) of this section 205
shall not hold an executive session when meeting for the purposes 206
specified in that division. 207

(H) A resolution, rule, or formal action of any kind is 208
invalid unless adopted in an open meeting of the public body. A 209
resolution, rule, or formal action adopted in an open meeting that 210
results from deliberations in a meeting not open to the public is 211
invalid unless the deliberations were for a purpose specifically 212
authorized in division (G) or (J) of this section and conducted at 213
an executive session held in compliance with this section. A 214
resolution, rule, or formal action adopted in an open meeting is 215
invalid if the public body that adopted the resolution, rule, or 216
formal action violated division (F) of this section. 217

(I)(1) Any person may bring an action to enforce this 218
section. An action under division (I)(1) of this section shall be 219
brought within two years after the date of the alleged violation 220
or threatened violation. Upon proof of a violation or threatened 221
violation of this section in an action brought by any person, the 222
court of common pleas shall issue an injunction to compel the 223
members of the public body to comply with its provisions. 224

(2)(a) If the court of common pleas issues an injunction 225
pursuant to division (I)(1) of this section, the court shall order 226
the public body that it enjoins to pay a civil forfeiture of five 227
hundred dollars to the party that sought the injunction and shall 228
award to that party all court costs and, subject to reduction as 229
described in division (I)(2) of this section, reasonable 230
attorney's fees. The court, in its discretion, may reduce an award 231

of attorney's fees to the party that sought the injunction or not 232
award attorney's fees to that party if the court determines both 233
of the following: 234

(i) That, based on the ordinary application of statutory law 235
and case law as it existed at the time of violation or threatened 236
violation that was the basis of the injunction, a well-informed 237
public body reasonably would believe that the public body was not 238
violating or threatening to violate this section; 239

(ii) That a well-informed public body reasonably would 240
believe that the conduct or threatened conduct that was the basis 241
of the injunction would serve the public policy that underlies the 242
authority that is asserted as permitting that conduct or 243
threatened conduct. 244

(b) If the court of common pleas does not issue an injunction 245
pursuant to division (I)(1) of this section and the court 246
determines at that time that the bringing of the action was 247
frivolous conduct, as defined in division (A) of section 2323.51 248
of the Revised Code, the court shall award to the public body all 249
court costs and reasonable attorney's fees, as determined by the 250
court. 251

(3) Irreparable harm and prejudice to the party that sought 252
the injunction shall be conclusively and irrebuttably presumed 253
upon proof of a violation or threatened violation of this section. 254

(4) A member of a public body who knowingly violates an 255
injunction issued pursuant to division (I)(1) of this section may 256
be removed from office by an action brought in the court of common 257
pleas for that purpose by the prosecuting attorney or the attorney 258
general. 259

(J)(1) Pursuant to division (C) of section 5901.09 of the 260
Revised Code, a veterans service commission shall hold an 261
executive session for one or more of the following purposes unless 262

an applicant requests a public hearing:	263
(a) Interviewing an applicant for financial assistance under sections 5901.01 to 5901.15 of the Revised Code;	264 265
(b) Discussing applications, statements, and other documents described in division (B) of section 5901.09 of the Revised Code;	266 267
(c) Reviewing matters relating to an applicant's request for financial assistance under sections 5901.01 to 5901.15 of the Revised Code.	268 269 270
(2) A veterans service commission shall not exclude an applicant for, recipient of, or former recipient of financial assistance under sections 5901.01 to 5901.15 of the Revised Code, and shall not exclude representatives selected by the applicant, recipient, or former recipient, from a meeting that the commission conducts as an executive session that pertains to the applicant's, recipient's, or former recipient's application for financial assistance.	271 272 273 274 275 276 277 278
(3) A veterans service commission shall vote on the grant or denial of financial assistance under sections 5901.01 to 5901.15 of the Revised Code only in an open meeting of the commission. The minutes of the meeting shall indicate the name, address, and occupation of the applicant, whether the assistance was granted or denied, the amount of the assistance if assistance is granted, and the votes for and against the granting of assistance.	279 280 281 282 283 284 285
Sec. 122.15. As used in sections 122.15 to 122.154 of the Revised Code:	286 287
(A) " Edison center <u>Director</u> " means a cooperative research and development facility that receives funding through the Thomas Alva Edison grant program under division (C) of section 122.33 <u>director of the Revised Code development.</u>	288 289 290 291
(B) "Ohio entity" means any corporation, limited liability	292

company, or unincorporated business organization, including a 293
general or limited partnership, that has its principal place of 294
business located in this state and has at least fifty per cent of 295
its gross assets and fifty per cent of its employees located in 296
this state. If a corporation, limited liability company, or 297
unincorporated business organization is a member of an affiliated 298
group, the gross assets and the number of employees of all of the 299
members of that affiliated group, wherever those assets and 300
employees are located, shall be included for the purpose of 301
determining the percentage of the corporation's, company's, or 302
organization's gross assets and employees that are located in this 303
state. 304

(C) "Qualified trade or business" means any trade or business 305
that primarily involves research and development, technology 306
transfer, bio-technology, information technology, or the 307
application of new technology developed through research and 308
development or acquired through technology transfer. "Qualified 309
trade or business" does not include any of the following: 310

(1) Any trade or business involving the performance of 311
services in the field of law, engineering, architecture, 312
accounting, actuarial science, performing arts, consulting, 313
athletics, financial services, or brokerage services, or any trade 314
or business where the principal asset of the trade or business is 315
the reputation or skill of one or more of its employees; 316

(2) Any banking, insurance, financing, leasing, rental, 317
investing, or similar business; 318

(3) Any farming business, including the business of raising 319
or harvesting trees; 320

(4) Any business involving the production or extraction of 321
products of a character with respect to which a deduction is 322
allowable under section 611, 613, or 613A of the "Internal Revenue 323

Code of 1986," 100 Stat. 2085, 26 U.S.C.A. 611, 613, or 613A; 324

(5) Any business of operating a hotel, motel, restaurant, or 325
similar business; 326

(6) Any trade or business involving a hospital, a private 327
office of a licensed health care professional, a group practice of 328
licensed health care professionals, or a nursing home. As used in 329
division (C)(6) of this section: 330

(a) "Nursing home" has the same meaning as in section 3721.50 331
of the Revised Code. 332

(b) "Hospital" has the same meaning as in section 3727.01 of 333
the Revised Code. 334

(D) "Information technology" means the branch of technology 335
devoted to the study and application of data and the processing 336
thereof; the automatic acquisition, storage, manipulation or 337
transformation, management, movement, control, display, switching, 338
interchange, transmission or reception of data, and the 339
development or use of hardware, software, firmware, and procedures 340
associated with this processing. Information technology includes 341
matters concerned with the furtherance of computer science and 342
technology, design, development, installation and implementation 343
of information systems and applications that in turn will be 344
licensed or sold to a specific target market. Information 345
technology does not include the creation of a distribution method 346
for existing products and services. 347

(E) "Insider" means an individual who owns, controls, or 348
holds power to vote five per cent or more of the outstanding 349
securities of a business. For purposes of determining whether an 350
investor is an insider, the percentage of voting power in the Ohio 351
entity held by a person related to the investor shall be added to 352
the investor's percentage of voting power in the same Ohio entity, 353
if the investor claimed the person related to the investor as a 354

dependent or a spouse on the investor's federal income tax return 355
for the previous tax year. 356

(F) "Related to" means being the spouse, parent, child, or 357
sibling of an individual. 358

(G) "Research and development" means designing, creating, or 359
formulating new or enhanced products, equipment, or processes, and 360
conducting scientific or technological inquiry and experimentation 361
in the physical sciences with the goal of increasing scientific 362
knowledge that may reveal the bases for new or enhanced products, 363
equipment, or processes. 364

(H) "State tax liability" means any tax liability incurred 365
under division (D) of section 5707.03, section 5727.24, 5727.38, 366
or 5747.02, or Chapter 5733. of the Revised Code. 367

(I) "Technology transfer" means the transfer of technology 368
from one sector of the economy to another, including the transfer 369
of military technology to civilian applications, civilian 370
technology to military applications, or technology from public or 371
private research laboratories to military or civilian 372
applications. 373

(J) "Affiliated group" means two or more persons related in 374
such a way that one of the persons owns or controls the business 375
operations of another of those persons. In the case of a 376
corporation issuing capital stock, one corporation owns or 377
controls the business operations of another corporation if it owns 378
more than fifty per cent of the other corporation's capital stock 379
with voting rights. In the case of a limited liability company, 380
one person owns or controls the business operations of the company 381
if that person's membership interest, as defined in section 382
1705.01 of the Revised Code, is greater than fifty per cent of 383
combined membership interest of all persons owning such interests 384
in the company. In the case of an unincorporated business 385

organization, one person owns or controls the business operations 386
of the organization if, under the articles of organization or 387
other instrument governing the affairs of the organization, that 388
person has a beneficial interest in the organization's profits, 389
surpluses, losses, or other distributions greater than fifty per 390
cent of the combined beneficial interests of all persons having 391
such an interest in the organization. 392

(K) "Money" means United States currency, or a check, draft, 393
or cashier's check for United States currency, payable on demand 394
and drawn on a bank. 395

(L) "EDGE business enterprise" means an Ohio entity certified 396
by the director of administrative services as a participant in the 397
encouraging diversity, growth, and equity program established by 398
the governor's executive order 2002-17T. 399

(M) "Distressed area" has the same meaning as in section 400
122.23 of the Revised Code. 401

Sec. 122.151. (A) An investor who proposes to make an 402
investment of money in an Ohio entity may apply to ~~an Edison~~ 403
~~center~~ the director for a tax credit under this section. The 404
~~Edison-center~~ director shall prescribe the form of the application 405
and any information that the investor must submit with the 406
application. The investor shall include with the application a fee 407
of two hundred dollars. The ~~center~~ director, within ~~three~~ four 408
weeks after receiving the application, shall review it, determine 409
whether the investor should be recommended for the tax credit, and 410
send written notice of ~~its~~ the director's initial determination to 411
the ~~industrial technology and enterprise advisory council~~ third 412
frontier commission established under section 184.01 of the 413
Revised Code and to the investor. If the ~~center~~ director 414
determines the investor should not be recommended for the tax 415
credit, ~~it~~ the director shall include in the notice the reasons 416

for the determination. Subject to divisions (C) and (D) of this 417
section, an investor is eligible for a tax credit if all of the 418
following requirements are met: 419

(1) The investor's investment of money is in an Ohio entity 420
engaged in a qualified trade or business. 421

(2) The Ohio entity had less than two million five hundred 422
thousand dollars of gross revenue during its most recently 423
completed fiscal year or had a net book value of less than two 424
million five hundred thousand dollars at the end of that fiscal 425
year. 426

(3) The investment takes the form of the purchase of common 427
or preferred stock, a membership interest, a partnership interest, 428
or any other ownership interest. 429

(4) The amount of the investment for which the credit is 430
being claimed does not exceed three hundred thousand dollars in 431
the case of an investment in an EDGE business enterprise or in an 432
Ohio entity located in a distressed area, or two hundred fifty 433
thousand dollars in the case of an investment in any other Ohio 434
entity. 435

(5) The money invested is entirely at risk of loss, where 436
repayment depends upon the success of the business operations of 437
the Ohio entity. 438

(6) No repayment of principal invested will be made for at 439
least three years from the date the investment is made. 440

(7) The annual combined amount of any dividend and interest 441
payments to be made to the investor will not exceed ten per cent 442
of the amount of the investment for at least three years from the 443
date the investment is made. 444

(8) The investor is not an employee with proprietary 445
decision-making authority of the Ohio entity in which the 446

investment of money is proposed, or related to such an individual. 447
The Ohio entity is not an individual related to the investor. For 448
purposes of this division, the ~~industrial technology and~~ 449
~~enterprise advisory council~~ director shall define "an employee 450
with proprietary decision-making authority." 451

(9) The investor is not an insider. 452

For the purposes of determining the net book value of an Ohio 453
entity under division (A)(1) or (2) of this section, if the entity 454
is a member of an affiliated group, the combined net book values 455
of all of the members of that affiliated group shall be used. 456

Nothing in division (A)(6) or (7) of this section limits or 457
disallows the distribution to an investor in a pass-through entity 458
of a portion of the entity's profits equal to the investor's 459
federal, state, and local income tax obligations attributable to 460
the investor's allocable share of the entity's profits. Nothing in 461
division (A)(6) or (7) of this section limits or disallows the 462
sale by an investor of part or all of the investor's interests in 463
an Ohio entity by way of a public offering of shares in the Ohio 464
entity. 465

(B) A group of two but not more than twenty investors, each 466
of whom proposes to make an investment of money in the same Ohio 467
entity, may submit an application for tax credits under division 468
(A) of this section. The group shall include with the application 469
a fee of eight hundred dollars. The application shall identify 470
each investor in the group and the amount of money each investor 471
proposes to invest in the Ohio entity, and shall name a contact 472
person for the group. The ~~Edison center~~ director, within ~~three~~ 473
four weeks after receiving the application, shall review it, 474
determine whether each investor of the group should be recommended 475
for a tax credit under the conditions set forth in division (A) of 476
this section, and send written notice of ~~its~~ the director's 477
determination to the ~~industrial technology and enterprise advisory~~ 478

~~ecouncil~~ commission and to the contact person. The ~~center~~ director 479
shall not recommend that a group of investors receive a tax credit 480
unless each investor is eligible under those conditions. The 481
~~center~~ director may disqualify from a group any investor who is 482
not eligible under the conditions and recommend that the remaining 483
group of investors receive the tax credit. If the ~~center~~ director 484
determines the group should not be recommended for the tax credit, 485
~~it~~ the director shall include in the notice the reasons for the 486
determination. 487

(C) ~~The industrial technology and enterprise advisory council~~ 488
~~shall establish from among its members a three person committee.~~ 489
Within four weeks after the ~~ecouncil~~ commission receives a notice 490
of recommendation from an ~~Edison center~~ the director, the 491
~~committee~~ commission shall review the recommendation and issue a 492
final determination of whether the investor or group is eligible 493
for a tax credit under the conditions set forth in division (A) of 494
this section. The ~~committee~~ commission may require the investor or 495
group to submit additional information to support the application. 496
~~The vote of at least two members of the committee is necessary for~~ 497
~~the issuance of a final determination or any other action of the~~ 498
~~committee.~~ Upon making the final determination, the ~~committee~~ 499
commission shall send written notice of approval or disapproval of 500
the tax credit to the investor or group contact person, and the 501
director ~~of development, and the Edison center.~~ If the ~~committee~~ 502
commission disapproves the tax credit, it shall include in the 503
notice the reasons for the disapproval. 504

(D)(1) ~~The industrial technology and enterprise advisory~~ 505
~~ecouncil~~ ~~committee~~ commission shall not approve more than one 506
million five hundred thousand dollars of investments in any one 507
Ohio entity. However, if a proposed investment of money in an Ohio 508
entity has been approved but the investor does not actually make 509
the investment, the ~~committee~~ commission may reassign the amount 510

of that investment to another investor, as long as the total 511
amount invested in the entity under this section does not exceed 512
one million five hundred thousand dollars. 513

If the one-million-five-hundred-thousand-dollar limit for an 514
Ohio entity has not yet been reached and an application proposes 515
an investment of money that would exceed the limit for that 516
entity, the ~~committee~~ commission shall send written notice to the 517
investor, or for a group, the contact person, that the investment 518
cannot be approved as requested. Upon receipt of the notice, the 519
investor or group may amend the application to propose an 520
investment of money that does not exceed the limit. 521

(2) Not more than ~~forty-five~~ fifty-one million dollars of tax 522
credits shall be issued under sections 122.15 to 122.154 of the 523
Revised Code. 524

(E) If an investor makes an approved investment of less than 525
two hundred fifty thousand dollars in any Ohio entity other than 526
an EDGE business enterprise or in an Ohio entity located in a 527
distressed area, the investor may apply for approval of another 528
investment of money in that entity, as long as the total amount 529
invested in that entity by the investor under this section does 530
not exceed two hundred fifty thousand dollars. If an investor 531
makes an approved investment of less than three hundred thousand 532
dollars in an EDGE business enterprise or in an Ohio entity 533
located in a distressed area, the investor may apply for approval 534
of another investment of money in that entity, as long as the 535
total amount invested in that entity by the investor under this 536
section does not exceed three hundred thousand dollars. An 537
investor who receives approval of an investment of money as part 538
of a group may subsequently apply on an individual basis for 539
approval of an additional investment of money in the Ohio entity. 540

(F) The ~~industrial technology and enterprise advisory council~~ 541
~~committee~~ commission shall approve or disapprove tax credit 542

applications under this section in the order in which they are 543
received by the ~~council~~ commission. 544

~~(G) The director of development may disapprove any 545
application recommended by an Edison center and approved by the 546
industrial technology and enterprise advisory council committee, 547
or may disapprove a credit for which a tax credit certificate has 548
been issued under section 122.152 of the Revised Code, if the 549
director determines that the entity in which the applicant 550
proposes to invest or has invested is not an Ohio entity eligible 551
to receive investments that qualify for the credit. If the 552
director disapproves an application, the director shall certify 553
the action to the investor, the Edison center that recommended the 554
application, the industrial technology and enterprise advisory 555
council, and the tax commissioner, together with a written 556
explanation of the reasons for the disapproval. If the director 557
disapproves a tax credit after a tax credit certificate is issued, 558
the investor shall not claim the credit for the taxable year that 559
includes the day the director disapproves the credit, or for any 560
subsequent taxable year. 561~~

~~The director of development, in accordance with section 562
111.15 of the Revised Code and with the advice of the ~~industrial 563
technology and enterprise advisory council~~ commission, may adopt, 564
amend, and rescind rules necessary to implement sections 122.15 to 565
122.154 of the Revised Code. 566~~

~~(H) ~~An Edison center~~ The director shall use application fees 567
received under this section only for the costs of administering 568
sections 122.15 to 122.154 of the Revised Code. 569~~

Sec. 122.152. (A) After receiving notice of approval for an 570
investment of money from the ~~industrial technology and enterprise 571
advisory council committee~~ third frontier commission under section 572
122.151 of the Revised Code, an investor, within a period of time 573

determined by the ~~committee~~ commission, may make the investment 574
and apply to the ~~council~~ commission for a tax credit certificate. 575
If the ~~committee~~ commission is satisfied the investor has made the 576
investment in the proper form, it shall issue to the investor a 577
tax credit certificate signed by the chairperson of the ~~committee~~ 578
commission and the director ~~of development~~ indicating that the 579
investor is allowed a tax credit equal to one of the following 580
amounts: 581

(1) Thirty per cent of the investment if the investment was 582
made in an EDGE business enterprise or in an Ohio entity located 583
in a distressed area; 584

(2) Twenty-five per cent of the investment if the investment 585
was made in an Ohio entity other than an EDGE business enterprise. 586

An investor who receives approval of a proposed investment of 587
money through a group application, after making the investment, 588
shall apply for a tax credit certificate on an individual basis. 589

(B) An investor who is issued a tax credit certificate under 590
this section may claim a nonrefundable credit equal to the amount 591
indicated on the certificate against any state tax liability. The 592
investor shall claim the credit for the taxable year in which the 593
certificate is issued. 594

(1) If the credit to which a taxpayer otherwise would be 595
entitled under this section for any taxable year is greater than 596
the tax otherwise due under division (D) of section 5707.03 or 597
section 5727.24 or 5727.38 of the Revised Code, the excess shall 598
be allowed as a credit in each of the ensuing fifteen taxable 599
years, but the amount of any excess credit allowed in an ensuing 600
taxable year shall be deducted from the balance carried forward to 601
the next taxable year. 602

(2) If the credit to which a taxpayer otherwise would be 603
entitled under this section for any taxable year is greater than 604

the tax otherwise due under section 5747.02 or Chapter 5733. of 605
the Revised Code, after allowing for any other credits that 606
precede the credit allowed under this section in the order 607
required under section 5733.98 or 5747.98 of the Revised Code, the 608
excess shall be allowed as a credit in each of the ensuing fifteen 609
taxable years, but the amount of any excess credit allowed in an 610
ensuing taxable year shall be deducted from the balance carried 611
forward to the next taxable year. 612

(C) Any portion of a credit allowed under this section that 613
is utilized by an investor to reduce the investor's state tax 614
liability shall not be utilized by any other person. 615

(D) To claim a tax credit allowed under this section, an 616
investor shall attach to the appropriate return a copy of the 617
certificate issued to the investor under this section. 618

(E) Nothing in this section shall limit or disallow 619
pass-through treatment of a pass-through entity's income, 620
deductions, or credits, or other amounts necessary to compute a 621
state tax liability. 622

(F) A tax credit certificate issued to an investor under this 623
section may not be transferred by that investor to any other 624
person. 625

(G)(1) The director ~~of development~~ shall develop the form of 626
the tax credit certificate and the ~~industrial technology and~~ 627
~~enterprise advisory council committee~~ commission shall use that 628
form when issuing a tax credit certificate under this section. 629

(2) The director ~~of development~~ shall report to the tax 630
commissioner any information requested by the commissioner 631
concerning tax credit certificates issued under this section. 632

(H) An investment made by an investor or group of investors 633
who enter into a contractual agreement with an Ohio entity to 634
invest money in the Ohio entity is an acceptable investment if all 635

of the following conditions are met: 636

(1) The investment is made pursuant to a subscription 637
agreement providing that the investor or group of investors is 638
entitled to receive a refund of funds if the investment is not 639
approved by the ~~industrial technology and enterprise advisory~~ 640
~~council committee~~ commission. 641

(2) The investment is placed in escrow until the investment 642
is approved by the ~~industrial technology and enterprise advisory~~ 643
~~council committee~~ commission. 644

(3) The investor or group of investors shows proof of the 645
withdrawal of the funds by the Ohio entity after the investment is 646
approved by the ~~industrial technology and enterprise advisory~~ 647
~~council committee~~ commission. 648

Sec. 122.153. If the ~~industrial technology and enterprise~~ 649
~~advisory council committee~~ third frontier commission receives 650
information alleging that an investor that was issued a tax credit 651
certificate presented false information to ~~an Edison center~~ the 652
director or the ~~committee~~ commission in connection with obtaining 653
the certificate, it shall send written notice to the investor that 654
if the allegation is found to be true the investor may be 655
penalized as provided in this section. After giving the investor 656
an opportunity to be heard on the allegation, the ~~committee~~ 657
commission shall determine if the investor presented false 658
information in connection with obtaining a tax credit certificate. 659

If the ~~committee~~ commission determines the investor submitted 660
false information, it may revoke any remaining tax credit 661
available to the investor. The ~~committee~~ commission shall send 662
written notice of the revocation to the investor and the tax 663
commissioner. The tax commissioner may make an assessment against 664
the investor to recapture any amount of tax credit that the 665
investor already has claimed. The time limitations on assessments 666

under the laws of the particular tax against which the investor 667
claimed the credit do not apply to an assessment under this 668
section. 669

Sec. 122.154. (A) A business may apply to ~~an Edison center~~ 670
the director for a determination as to whether the business is an 671
Ohio entity eligible to receive investments of money under section 672
122.151 of the Revised Code that qualify the investor for a tax 673
credit under section 122.152 of the Revised Code. The business 674
shall include with the application a fee of one hundred fifty 675
dollars and a business plan. The ~~Edison center~~ director shall 676
prescribe any other information the business must submit with the 677
application and the form of the application. The ~~center~~ director, 678
within ~~three~~ four weeks after receiving the application, shall 679
review it, determine whether the business is an Ohio entity 680
eligible to receive investments of money that qualify for the tax 681
credit, and send written notice to the ~~industrial technology and~~ 682
~~enterprise advisory council~~ third frontier commission and the 683
business of ~~its~~ the director's initial determination. If the 684
~~center~~ director determines that the business is not an Ohio entity 685
eligible to receive investments of money that qualify for the tax 686
credit, ~~it~~ the director shall include in the notice the reasons 687
for the determination. 688

Within four weeks after the ~~council~~ commission receives a 689
notice of recommendation from ~~an Edison center~~ the director, the 690
~~industrial technology and enterprise advisory council~~ committee 691
~~established under section 122.152 of the Revised Code~~ commission 692
shall review the recommendation and issue a final determination of 693
whether the business is an Ohio entity eligible to receive 694
investments of money under section 122.151 of the Revised Code 695
that qualify an investor for a tax credit under section 122.152 of 696
the Revised Code. The ~~committee~~ commission may require the 697
business to submit additional information to support the 698

application. ~~The vote of at least two members of the committee is~~ 699
~~necessary for the issuance of a final determination.~~ On making the 700
final determination, the ~~committee~~ commission shall send written 701
notice of approval or disapproval to the business, and the 702
~~director of development, and the Edison center.~~ If the ~~committee~~ 703
commission determines that the business is not an Ohio entity 704
eligible to receive investments of money that qualify for the tax 705
credit, it shall include in the notice the reasons for the 706
determination. 707

(B) The department of development shall maintain a list of 708
the businesses that have been determined to be Ohio entities 709
eligible to receive investments of money that qualify for the tax 710
credit. The department shall furnish copies of the list to the 711
public upon request. 712

(C) The department ~~of development~~ may prescribe a schedule 713
under which businesses periodically must submit information to 714
enable the ~~center~~ department to maintain the accuracy of the list. 715
At the times required in the schedule, each business on the list 716
shall submit any information the ~~center~~ department requires to 717
determine if the business continues to be an Ohio entity eligible 718
to receive investments of money that qualify for the tax credit. 719

(D) ~~An Edison center~~ The director shall use fees received 720
under this section only for the costs of administering sections 721
122.15 to 122.154 of the Revised Code. 722

(E) The ~~Edison centers~~ director and the ~~industrial technology~~ 723
~~and enterprise advisory council and its committee~~ commission do 724
not assume any responsibility for the accuracy or truthfulness of 725
information furnished by an Ohio entity or its agents. 726

An investor in an Ohio entity is solely responsible for due 727
diligence in verifying information submitted by an Ohio entity. ~~An~~ 728
~~Edison center~~ The department is not liable for any action 729

resulting from its provision of such information to investors in 730
accordance with sections 122.15 to 122.154 of the Revised Code. 731

Sec. 122.28. As used in sections 122.28 and 122.30 to 122.36 732
of the Revised Code: 733

(A) "New technology" means the development through science or 734
research of methods, processes, and procedures, including but not 735
limited to those involving the processing and utilization of coal, 736
for practical application in industrial or agribusiness 737
situations. 738

(B) "Industrial research" means study and investigation in 739
giving new shapes, new qualities or new combinations to matter or 740
material products by the application of labor thereto or the 741
rehabilitation of an existing matter or material product. 742

(C) "Enterprise" means a business with its principal place of 743
business in this state or which proposes to be engaged in this 744
state in research and development or in the provision of products 745
or services involving a significant amount of new technology. 746

(D) "Educational institutions" means nonprofit public and 747
private colleges and universities, incorporated or unincorporated, 748
in the state. 749

(E) "Small business" means an enterprise with less than four 750
hundred employees, including corporations, partnerships, 751
unincorporated entities, proprietorships, and joint enterprises. 752

(F) "Applied research" means the application of basic 753
research for the development of new technology. 754

Sec. 122.30. The ~~industrial technology and enterprise~~ 755
~~advisory council~~ third frontier commission established in section 756
184.01 of the Revised Code and the director of development are 757
vested with the powers and duties provided in sections 122.28 and 758

122.30 to 122.36 of the Revised Code, to promote the welfare of 759
the people of the state through the interaction of the business 760
and industrial community and educational institutions in the 761
development of new technology and enterprise. 762

(A) It is necessary for the state to establish the ~~industrial~~ 763
~~technology and enterprise advisory council~~ and the programs 764
created pursuant to sections 122.28 and 122.30 to 122.36 of the 765
Revised Code to accomplish the following purposes which are 766
determined to be essential: 767

(1) Improve the existing industrial and agricultural base of 768
the state; 769

(2) Improve the economy of the state by providing employment, 770
increasing productivity, and slowing the rate of inflation; 771

(3) Develop markets worldwide for the products of the state's 772
natural resources and agricultural and manufacturing industries; 773

(4) Maintain a high standard of living for the people of the 774
state. 775

(B) The ~~industrial technology and enterprise advisory council~~ 776
commission shall do ~~all~~ both of the following: 777

(1) Make recommendations to the director of development as to 778
applications for assistance pursuant to sections 122.28 and 122.30 779
to 122.36 of the Revised Code. The ~~council~~ commission may revise 780
its recommendations to reflect any changes in the proposed 781
assistance made by the director. 782

(2) Advise the director in the administration of sections 783
122.28 and 122.30 to 122.36 of the Revised Code; 784

~~(3) Adopt bylaws to govern the conduct of the council's~~ 785
~~business.~~ 786

(C) The director of development shall do all of the 787
following: 788

- (1) Receive applications for assistance under sections 122.28 789
and 122.30 to 122.36 of the Revised Code and, after processing, 790
forward them to the ~~council~~ commission together with necessary 791
supporting information; 792
- (2) Receive the recommendations of the ~~council~~ commission and 793
make a final determination whether to approve the application for 794
assistance; 795
- (3) Transmit determinations to approve assistance exceeding 796
forty thousand dollars to the controlling board, together with any 797
information the controlling board requires, for the board's review 798
and decision as to whether to approve the assistance; 799
- (4) Gather and disseminate information and conduct hearings, 800
conferences, seminars, investigations, and special studies on 801
problems and programs concerning industrial research and new 802
technology and their commercial applications in the state; 803
- (5) Establish an annual program to recognize the 804
accomplishments and contributions of individuals and organizations 805
in the development of industrial research and new technology in 806
the state; 807
- (6) Stimulate both public and industrial awareness and 808
interest in industrial research and development of new technology 809
primarily in the areas of industrial processes, implementation, 810
energy, agribusiness, medical technology, avionics, and food 811
processing; 812
- (7) Develop and implement comprehensive and coordinated 813
policies, programs, and procedures promoting industrial research 814
and new technology; 815
- (8) Propose appropriate legislation or executive actions to 816
stimulate the development of industrial research and new 817
technology by enterprises and individuals; 818

- (9) Encourage and facilitate contracts between industry, agriculture, educational institutions, federal agencies, and state agencies, with special emphasis on industrial research and new technology by small businesses and agribusiness;
- (10) Participate with any state agency in developing specific programs and goals to assist in the development of industrial research and new technology and monitor performance;
- (11) Assist enterprises in obtaining alternative forms of governmental or commercial financing for industrial research and new technology;
- (12) Assist enterprises or individuals in the implementation of new programs and policies and the expansion of existing programs to provide an atmosphere conducive to increased cooperation among and participation by individuals, enterprises, and educational institutions engaged in industrial research and the development of new technology;
- (13) Advertise, prepare, print, and distribute books, maps, pamphlets, and other information which in the judgment of the director will further its purposes;
- (14) Include in the director's annual report to the governor and the general assembly a report on the activities for the preceding calendar year under sections 122.28 and 122.30 to 122.36 of the Revised Code;
- (15) Approve the expenditure of money appropriated by the general assembly for the purpose of sections 122.28 and 122.30 to 122.36 of the Revised Code;
- (16) Identify and implement federal research and development programs which would link Ohio's industrial base, research facilities, and natural resources;
- (17) Employ and fix the compensation of technical and

professional personnel, who shall be in the unclassified civil 849
service, and employ other personnel, who shall be in the 850
classified civil service, as necessary to carry out the provisions 851
of sections 122.28 and 122.30 to 122.36 of the Revised Code. 852

Sec. 122.31. All expenses and obligations incurred by the 853
director of development and the ~~industrial technology and~~ 854
~~enterprise advisory council~~ third frontier commission in carrying 855
out their powers and in exercising their duties under sections 856
122.28 and 122.30 to 122.36 of the Revised Code, are payable from 857
revenues or other receipts or income from grants, gifts, 858
contributions, compensation, reimbursement, and funds established 859
in accordance with those sections or general revenue funds 860
appropriated by the general assembly for operating expenses of the 861
director or ~~council~~ commission. 862

Sec. 122.32. The director of development, on behalf of the 863
programs authorized pursuant to sections 122.28 and 122.30 to 864
122.36 of the Revised Code, may receive and accept grants, gifts, 865
and contributions of money, property, labor, and other things of 866
value to be held, used, and applied only for the purpose for which 867
the grants, gifts, and contributions are made, from individuals, 868
private and public corporations, from the United States or any 869
agency of the United States, and from any political subdivision of 870
the state. The director may agree to repay any contribution of 871
money or to return any property contributed or its value at times, 872
in amounts, and on terms and conditions excluding the payment of 873
interest as the director determines at the time the contribution 874
is made. The director may evidence the obligation by written 875
contracts, subject to section 122.31 of the Revised Code, provided 876
that the director shall not thereby incur indebtedness of or 877
impose liability upon the state or any political subdivision. 878

Sec. 122.33. The director of development shall administer the 879
following programs: 880

(A) The industrial technology and enterprise development 881
grant program, to provide capital to acquire, construct, enlarge, 882
improve, or equip and to sell, lease, exchange, and otherwise 883
dispose of property, structures, equipment, and facilities within 884
the state. 885

Such funding may be made to enterprises that propose to 886
develop new products or technologies when the director finds all 887
of the following factors to be present: 888

(1) The undertaking will benefit the people of the state by 889
creating or preserving jobs and employment opportunities or 890
improving the economic welfare of the people of the state, and 891
promoting the development of new technology. 892

(2) There is reasonable assurance that the potential 893
royalties to be derived from the sale of the product or process 894
described in the proposal will be sufficient to repay the funding 895
pursuant to sections 122.28 and 122.30 to 122.36 of the Revised 896
Code and that, in making the agreement, as it relates to patents, 897
copyrights, and other ownership rights, there is reasonable 898
assurance that the resulting new technology will be utilized to 899
the maximum extent possible in facilities located in Ohio. 900

(3) The technology and research to be undertaken will allow 901
enterprises to compete more effectively in the marketplace. Grants 902
of capital may be in such form and conditioned upon such terms as 903
the ~~board~~ director deems appropriate. 904

(B) The industrial technology and enterprise resources 905
program to provide for the collection, dissemination, and exchange 906
of information regarding equipment, facilities, and business 907
planning consultation resources available in business, industry, 908

and educational institutions and to establish methods by which 909
small businesses may use available facilities and resources. The 910
methods may include, but need not be limited to, leases 911
reimbursing the educational institutions for their actual costs 912
incurred in maintaining the facilities and agreements assigning 913
royalties from development of successful products or processes 914
through the use of the facilities and resources. The director 915
shall operate this program in conjunction with the board of 916
regents. 917

(C) The Thomas Alva Edison grant program to provide grants to 918
foster research, development, or technology transfer efforts 919
involving enterprises and educational institutions that will lead 920
to the creation of jobs. 921

(1) Grants may be made to a nonprofit organization or a 922
public or private educational institution, department, college, 923
institute, faculty member, or other administrative subdivision or 924
related entity of an educational institution when the director 925
finds that the undertaking will benefit the people of the state by 926
supporting research in advanced technology areas likely to improve 927
the economic welfare of the people of the state through promoting 928
the development of new commercial technology. 929

(2) Grants may be made in a form and conditioned upon terms 930
as the director considers appropriate. 931

(3) Grants made under this program shall in all instances be 932
in conjunction with a contribution to the project by a cooperating 933
enterprise which maintains or proposes to maintain a relevant 934
research, development, or manufacturing facility in the state, by 935
a nonprofit organization, or by an educational institution or 936
related entity; however, funding provided by an educational 937
institution or related entity shall not be from general revenue 938
funds appropriated by the Ohio general assembly. No grant made 939
under this program shall exceed the contribution made by the 940

cooperating enterprise, nonprofit organization, or educational 941
institution or related entity. The director may consider 942
cooperating contributions in the form of state of the art new 943
equipment or in other forms provided the director determines that 944
the contribution is essential to the successful implementation of 945
the project. The director may adopt rules or guidelines for the 946
valuation of contributions of equipment or other property. 947

(4) The director may determine fields of research from which 948
grant applications will be accepted under this program. 949

Sec. 122.34. The exercise of the powers granted by sections 950
122.28 and 122.30 to 122.36 of the Revised Code will be in all 951
respects for the benefit of the people of the state, for the 952
improvement of commerce and prosperity, improvement of employment 953
conditions, and will constitute the performance of essential 954
governmental functions. 955

Sec. 122.35. All moneys received under sections 122.28 and 956
122.30 to 122.36 of the Revised Code are trust funds to be held 957
and applied solely as provided in those sections and section 958
166.03 of the Revised Code. All moneys, except when deposited with 959
the treasurer of the state, shall be kept and secured in 960
depositories as selected by the director of development in the 961
manner provided in sections 135.01 to 135.21 of the Revised Code, 962
insofar as those sections are applicable. All moneys held by the 963
director in trust to carry out the purposes of sections 122.28 and 964
122.30 to 122.36 of the Revised Code shall be used as provided in 965
sections 122.28 and 122.30 to 122.36 of the Revised Code and at no 966
time be part of other public funds. 967

Sec. 122.36. Any materials or data submitted to, made 968
available to, or received by the director of development, the 969
~~industrial technology and enterprise advisory council~~ third 970

frontier commission, or the controlling board, to the extent that 971
the material or data consist of trade secrets, as defined in 972
section 1333.61 of the Revised Code, or commercial or financial 973
information, regarding projects are not public records for the 974
purposes of section 149.43 of the Revised Code. 975

Sec. 150.03. Within ninety days after April 9, 2003, the 976
authority shall establish, and subsequently may modify as it 977
considers necessary, a written investment policy governing the 978
investment of money from the program fund, which is hereby 979
created. The program fund shall consist of the proceeds of loans 980
acquired by a program administrator. The authority is subject to 981
Chapter 119. of the Revised Code with respect to the establishment 982
or modification of the policy. The policy shall meet all the 983
following requirements: 984

(A) It is consistent with the purpose of the program stated 985
in section 150.01 of the Revised Code. 986

(B) Subject to divisions (C), (D), and (E) of this section, 987
it permits the investment of money from the program fund in 988
private, for-profit venture capital funds, including funds of 989
funds, that invest in enterprises in the seed or early stage of 990
business development or established business enterprises 991
developing new methods or technologies, and that demonstrate 992
potential to generate high levels of successful investment 993
performance. 994

(C) It specifies that a program administrator or fund manager 995
employed by the program administrator shall invest not less than 996
seventy-five per cent of program fund money under its investment 997
authority in Ohio-based venture capital funds. 998

(D) It specifies both of the following: 999

(1) That not less than an amount equal to fifty per cent of 1000

program fund money invested in any venture capital fund be 1001
invested by the venture capital fund in Ohio-based business 1002
enterprises; 1003

(2) That, commencing with the first program fund commitment 1004
to each venture capital fund, the aggregate amount funded into 1005
Ohio-based business enterprises by all venture capital funds to 1006
which the program fund has committed be not less than the 1007
aggregate amount of all program fund money funded into those 1008
venture capital funds. 1009

(E) It specifies that a program administrator or fund manager 1010
employed by the program administrator shall not invest money from 1011
the program fund in a venture capital fund to the extent that the 1012
total amount of program fund money invested in the venture capital 1013
fund, when combined with any program fund money invested in a 1014
venture capital fund under the same management as, and formed 1015
within two years before or after the formation of, that venture 1016
capital fund, exceeds the lesser of the following: 1017

(1) Ten million dollars; 1018

(2)(a) In the case of an Ohio-based venture capital fund, 1019
fifty per cent of the total amount of capital committed to the 1020
fund from all sources, after accounting for capital committed from 1021
the program fund; 1022

(b) In the case of any other venture capital fund, twenty per 1023
cent of the total amount of capital committed to the fund from all 1024
sources, after accounting for capital committed from the program 1025
fund. 1026

(F) It specifies that a program administrator or fund manager 1027
employed by the program administrator shall not commit capital 1028
from the program fund to a venture capital fund until the venture 1029
capital fund receives commitment of at least the same amount from 1030
other investors in the fund. 1031

(G) It specifies the general conditions a private, for-profit investment fund must meet to be selected as a program administrator under section 150.05 of the Revised Code, including, as a significant selection standard, direct experience managing external or nonproprietary capital in private equity fund of funds formats.

(H) It specifies the criteria the authority must consider when making a determination under division (B)(1) of section 150.04 of the Revised Code.

(I) It includes investment standards and general limitations on allowable investments that the authority considers reasonable and necessary to achieve the purposes of this chapter as stated in division (B) of section 150.01 of the Revised Code, minimize the need for the authority to grant tax credits under section 150.07 of the Revised Code, ensure compliance of the program administrators with all applicable laws of this state and the United States, and ensure the safety and soundness of investments of money from the program fund.

(J) It prohibits the investment of money from the program fund directly in persons other than venture capital funds, except for temporary investment in investment grade debt securities or temporary deposit in interest-bearing accounts or funds pending permanent investment in venture capital funds.

Sec. 150.05. (A) The authority shall select, as program administrators, not more than two private, for-profit investment funds to acquire loans for the program fund and to invest money in the program fund as prescribed in the investment policy established or modified by the authority in accordance with sections 150.03 and 150.04 of the Revised Code. The authority shall give equal consideration, in selecting these program administrators, to minority owned and controlled investment funds,

to funds owned and controlled by women, to ventures involving 1063
minority owned and controlled funds, and to ventures involving 1064
funds owned and controlled by women that otherwise meet the 1065
policies and criteria established by the authority. To be eligible 1066
for selection, an investment fund must be incorporated or 1067
organized under Chapter 1701., 1705., 1775., 1776., 1782., or 1068
1783. of the Revised Code, ~~must have an established business~~ 1069
~~presence in this state,~~ and must be capitalized in accordance with 1070
any state and federal laws applicable to the issuance or sale of 1071
securities. 1072

The authority shall select program administrators only after 1073
soliciting and evaluating requests for proposals as prescribed in 1074
this section. The authority shall publish a notice of a request 1075
for proposals in newspapers of general circulation in this state 1076
once each week for two consecutive weeks before a date specified 1077
by the authority as the date on which it will begin accepting 1078
proposals. The notices shall contain a general description of the 1079
subject of the proposed agreement and the location where the 1080
request for proposals may be obtained. The request for proposals 1081
shall include all the following: 1082

(1) Instructions and information to respondents concerning 1083
the submission of proposals, including the name and address of the 1084
office where proposals are to be submitted; 1085

(2) Instructions regarding the manner in which respondents 1086
may communicate with the authority, including the names, titles, 1087
and telephone numbers of the individuals to whom such 1088
communications shall be directed; 1089

(3) Description of the performance criteria that will be used 1090
to evaluate whether a respondent selected by the authority is 1091
satisfying the authority's investment policy; 1092

(4) Description of the factors and criteria to be considered 1093

in evaluating respondents' proposals, which shall include the past 1094
performance of the respondent in successfully administering 1095
similar programs and achieving positive investment returns, the 1096
relative importance of each factor or criterion, and description 1097
of the authority's evaluation procedure; 1098

(5) Description of any documents that may be incorporated by 1099
reference into the request for proposals, provided that the 1100
request specifies where such documents may be obtained and such 1101
documents are readily available to all interested parties. 1102

After the date specified for receiving proposals, the 1103
authority shall evaluate submitted proposals. The authority may 1104
discuss a respondent's proposal with that respondent to clarify or 1105
revise a proposal or the terms of the agreement. 1106

The authority shall choose for review proposals from at least 1107
three respondents the authority considers qualified to operate the 1108
program in the best interests of the investment policy adopted by 1109
the authority. If three or fewer proposals are submitted, the 1110
authority shall review each proposal. The authority may cancel a 1111
request for proposals at any time before entering into an 1112
agreement with a respondent. The authority shall provide 1113
respondents fair and equal opportunity for such discussions. The 1114
authority may terminate discussions with any respondent upon 1115
written notice to the respondent. 1116

(B) After reviewing the chosen proposals, the authority may 1117
select not more than two such respondents and enter into a written 1118
agreement with each of the selected respondents, provided that at 1119
no time shall there be agreements with more than two persons. 1120

The agreement shall do all of the following: 1121

(1) Specify that borrowing and investing by the program 1122
administrator will be budgeted to guarantee that no tax credits 1123
will be granted during the first four years of the Ohio venture 1124

capital program, and will be structured to ensure that payments of 1125
principal, interest, or interest equivalent due in any fiscal 1126
year, when added to such payments due from any other program 1127
administrator, does not exceed ~~twenty~~ twenty-six million five 1128
hundred thousand dollars; 1129

(2) Require investment by the program administrator or the 1130
fund manager employed by the program administrator to be in 1131
compliance with the investment policy established or modified in 1132
accordance with sections 150.03 and 150.04 of the Revised Code 1133
that is in effect at the time the investment is made, and prohibit 1134
the program administrator or fund manager from engaging in any 1135
investment activities other than activities to carry out that 1136
policy; 1137

(3) Require periodic financial reporting by the program 1138
administrator to the authority, which reporting shall include an 1139
annual audit by an independent auditor and such other financial 1140
reporting as is specified in the agreement or otherwise required 1141
by the authority for the purpose of ensuring that the program 1142
administrator is carrying out the investment policy; 1143

(4) Specify any like standards or general limitations in 1144
addition to or in furtherance of investment standards or 1145
limitations that apply pursuant to division (H) of section 150.03 1146
of the Revised Code; 1147

(5) Require the program administrator to apply program fund 1148
revenue first to the payment of principal borrowed by the program 1149
administrator for investment under the program, then to interest 1150
related to that principal, and then to amounts necessary to cover 1151
the program administrator's pro rata share required under division 1152
(B)(9) of this section; and require the program administrator to 1153
pay the authority not less than ninety per cent of the amount by 1154
which program fund revenue attributable to investments under the 1155
program administrator's investment authority exceeds amounts so 1156

applied; 1157

(6) Specify the procedures by which the program administrator 1158
shall certify immediately to the authority the necessity for the 1159
authority to issue tax credit certificates pursuant to contracts 1160
entered into under section 150.07 of the Revised Code; 1161

(7) Specify any general limitations regarding the employment 1162
of a fund manager by the program administrator, in addition to an 1163
express limitation that the fund manager be a person with 1164
demonstrated, substantial, successful experience in the design and 1165
management of seed and venture capital investment programs and in 1166
capital formation. The fund manager may be, but need not be, an 1167
equity owner or affiliate of the program administrator. 1168

(8) Specify the terms and conditions under which the 1169
authority or the program administrator may terminate the 1170
agreement, including in the circumstance that the program 1171
administrator or fund manager violates the investment policy; 1172

(9) Require the program administrator or fund manager 1173
employed by the program administrator to provide capital in the 1174
form of a loan equal to one per cent of the amount of outstanding 1175
loans by lenders to the program fund. The loan from the program 1176
administrator or fund manager shall be on the same terms and 1177
conditions as loans from other lenders, except that the loan from 1178
the program administrator or fund manager shall not be secured by 1179
the Ohio venture capital fund or tax credits available to other 1180
lenders under division (B) of section 150.04 of the Revised Code. 1181
Such capital shall be placed at the same risk as the proceeds from 1182
such loans. The program administrator shall receive a pro rata 1183
share of the net income, including net loss, from the investment 1184
of money from the program fund, but is not entitled to the 1185
security against losses provided under section 150.04 of the 1186
Revised Code. 1187

(10) Specify that the program administrator and the fund manager employed by the program administrator must have a significant presence in this state, and define how a significant presence in this state shall be determined.

Sec. 150.07. (A) For the purpose stated in section 150.01 of the Revised Code, the authority may authorize a lender to claim one of the refundable tax credits allowed under section 5707.031, 5725.19, 5727.241, 5729.08, 5733.49, or 5747.80 of the Revised Code. The credits shall be authorized by a written contract with the lender. The contract shall specify the terms under which the lender may claim the credit, including the amount of loss, if any, the lender must incur before the lender may claim the credit; specify that the credit shall not exceed the amount of the loss; and specify that the lender may claim the credit only for a loss certified by a program administrator to the authority under the procedures prescribed under division (B)(6) of section 150.05 of the Revised Code. The program administrator shall provide to the authority an estimate of the amount of tax credits, if any, that are likely, in the administrator's reasonable judgment, to be claimed by a lender during the current and next succeeding state fiscal years. The estimate shall be provided at the same time each year that the administrator is required to report the annual audit to the authority under section 150.05 of the Revised Code.

(B) Tax credits may be authorized at any time after the authority establishes the investment policy under section 150.03 of the Revised Code, but a tax credit so authorized may not be claimed before July 1, 2007, or after June 30, 2026, except, with respect to loans made from the proceeds of obligations issued under section 4582.71 of the Revised Code, a tax credit may not be claimed before July 1, 2012, or after June 30, 2036.

(C)(1) Upon receiving certification of a lender's loss from a

program administrator pursuant to the procedures in the investment 1219
policy, the authority shall issue a tax credit certificate to the 1220
lender, except as otherwise provided in division (D) of this 1221
section. 1222

(2) If the lender is a pass-through entity, as defined in 1223
section 5733.04 of the Revised Code, then each equity investor in 1224
the lender pass-through entity shall be entitled to claim one of 1225
the tax credits allowed under division (A) of this section for 1226
that equity investor's taxable year in which or with which ends 1227
the taxable year of the lender pass-through entity in an amount 1228
based on the equity investor's distributive or proportionate share 1229
of the credit amount set forth in the certificate issued by the 1230
authority. If all equity investors of the lender pass-through 1231
entity are not eligible to claim a credit against the same tax set 1232
forth in division (A) of this section, then each equity investor 1233
may elect to claim a credit against the tax to which the equity 1234
investor is subject to in an amount based on the equity investor's 1235
distributive or proportionate share of the credit amount set forth 1236
in the certificate issued by the authority. 1237

(3) The certificate shall state the amount of the credit and 1238
the calendar year under section 5707.031, 5725.19, 5727.241, or 1239
5729.08, the tax year under section 5733.49, or the taxable year 1240
under section 5747.80 of the Revised Code for which the credit may 1241
be claimed. The authority, in conjunction with the tax 1242
commissioner, shall develop a system for issuing tax credit 1243
certificates for the purpose of verifying that any credit claimed 1244
is a credit issued under this section and is properly taken in the 1245
year specified in the certificate and in compliance with division 1246
(B) of this section. 1247

(D) The authority shall not, in any fiscal year, issue tax 1248
credit certificates under this section in a total amount exceeding 1249
~~twenty~~ twenty-six million five hundred thousand dollars. The 1250

authority shall not issue tax credit certificates under this 1251
section in a total amount exceeding ~~three~~ five hundred ~~eighty~~ 1252
fifty million dollars. 1253

(E) Notwithstanding any other section of this chapter or any 1254
provision of Chapter 5707., 5725., 5727., 5729., 5733., or 5747. 1255
of the Revised Code, if provided by the terms of an agreement 1256
entered into by the issuer and the authority under division (E) of 1257
section 150.02 of the Revised Code, and subject to the limitations 1258
of divisions (B) and (D) of this section, a trustee shall have the 1259
right, for the benefit of the issuer, to receive and claim the 1260
credits authorized under division (A) of this section solely for 1261
the purpose provided for in section 150.04 of the Revised Code, 1262
and the trustee shall be entitled to file a tax return, an amended 1263
tax return, or an estimated tax return at such times as are 1264
permitted or required under the applicable provisions of Chapter 1265
5707., 5725., 5727., 5729., 5733., or 5747. of the Revised Code 1266
for the purpose of claiming credits issued to the trustee. The 1267
trustee shall receive the proceeds of such a tax credit for the 1268
benefit of the issuer, and shall apply the proceeds solely to 1269
satisfy a loss or restore a reserve as provided in section 150.04 1270
of the Revised Code. Nothing in this section shall require a 1271
trustee to file a tax return under any chapter for any purpose 1272
other than claiming such credits if the trustee is not otherwise 1273
required to make such a filing. 1274

The general assembly may from time to time modify or repeal 1275
any of the taxes against which the credits authorized under 1276
division (A) of this section may be claimed, and may authorize 1277
those credits to be claimed for the purposes provided for in 1278
section 150.04 of the Revised Code with respect to any other tax 1279
imposed by this state; provided, that if any obligations issued 1280
under section 4582.71 of the Revised Code are then outstanding and 1281
such modification or repeal would have the effect of impairing any 1282

covenant made in or pursuant to an agreement under division (E) of 1283
section 150.02 of the Revised Code regarding the maintenance or 1284
restoration of reserves established and maintained with a trustee 1285
consistent with division (B)(2) of section 150.04 of the Revised 1286
Code and such agreement, the state shall provide other security to 1287
the extent necessary to avoid or offset the impairment of such 1288
covenant. 1289

Sec. 150.10. (A) On the first day of January of the second 1290
year after the date of entering into an agreement under section 1291
150.05 of the Revised Code and of each ensuing year, the authority 1292
shall file with the clerk of the house of representatives, the 1293
clerk of the senate, ~~and~~ the chairpersons of the house and senate 1294
standing committees predominantly concerned with economic 1295
development, and the chairpersons of the house and senate standing 1296
committees predominantly concerned with taxation a written report 1297
on the Ohio venture capital program. The report shall include all 1298
the following: 1299

(1) A description of the details of the investment policy 1300
established or modified in accordance with sections 150.03 and 1301
150.04 of the Revised Code; 1302

(2) The authority's assessment of the program's achievement 1303
of its purpose stated in section 150.01 of the Revised Code; 1304

(3) The value of tax credit certificates issued by the 1305
authority under section 150.07 of the Revised Code in each fiscal 1306
year ending on or before the preceding thirtieth day of June; 1307

(4) The amount of tax credits claimed pursuant to section 1308
5707.031, 5725.19, 5727.241, 5729.08, 5733.49, or 5747.80 of the 1309
Revised Code, as to the respective taxes involved; 1310

(5) The financial status of the Ohio venture capital fund; 1311

(6) The names of venture capital funds in which money from 1312

the program fund has been invested and the locations of their 1313
principal offices, ~~and~~ the names of the enterprises in which each 1314
of those venture capital funds has invested such money and the 1315
locations of those enterprises' principal offices, and the amount 1316
of investment by those funds in Ohio-based business enterprises. 1317
For such Ohio-based business enterprises, the report shall 1318
indicate the development stage, as that term is defined by the 1319
authority, of each enterprise on the date a venture capital fund 1320
first invests money from the program fund in the enterprise, the 1321
aggregate amount of program funds invested in such enterprises 1322
from every investment round, and the sources of any funding 1323
secured by such enterprises after a venture capital fund first 1324
invests money from the program fund in the enterprise; 1325

(7) Any recommendations for modifying the program to better 1326
achieve the purpose stated in section 150.01 of the Revised Code; 1327

(8) The geographic distribution of investments from venture 1328
capital funds of money distributed to the funds under the program; 1329

(9) The number of jobs created at Ohio-based enterprises in 1330
which a venture capital fund or funds have invested program fund 1331
money since the date program fund money was first invested in the 1332
enterprise. 1333

(B) During each year that a report is issued under division 1334
(A) of this section, the chairperson of the authority, or another 1335
member of the authority designated by the chairperson as the 1336
authority's representative, shall be required to appear in person 1337
before the standing committees of the house and senate 1338
predominantly concerned with economic development and the standing 1339
committees of the house and senate predominantly concerned with 1340
taxation to give testimony concerning the status of the Ohio 1341
venture capital program. 1342

Sec. 184.02. (A) In addition to the powers and duties under 1343

sections 121.22, 122.15 to 122.154, 122.28, 122.30 to 122.36, 1344
184.10 to 184.20, and 184.37 of the Revised Code, the third 1345
frontier commission may perform any act to ensure the performance 1346
of any function necessary or appropriate to carry out the purposes 1347
of, and exercise the powers granted under, sections 184.01 and 1348
184.02 of the Revised Code. In addition, the commission may do any 1349
of the following: 1350

(1) Adopt, amend, and rescind rules under section 111.15 of 1351
the Revised Code for the administration of any aspect of its 1352
operations; 1353

(2) Adopt bylaws governing its operations, including bylaws 1354
that establish procedures and set policies as may be necessary to 1355
assist with the furtherance of its purposes; 1356

(3) Appoint and set the compensation of employees needed to 1357
carry out its duties; 1358

(4) Contract with, retain the services of, or designate, and 1359
fix the compensation of, such financial consultants, accountants, 1360
other consultants and advisors, and other independent contractors 1361
as may be necessary or desirable to carry out its duties; 1362

(5) Solicit input and comments from the third frontier 1363
advisory board, and specialized industry, professional, and other 1364
relevant interest groups concerning its purposes; 1365

(6) Facilitate alignment of the state's science and 1366
technology programs and activities; 1367

(7) Make grants and loans to individuals, public agencies, 1368
private companies or organizations, or joint ventures for any of 1369
the broad range of activities related to its purposes. 1370

(B) In addition to the powers and duties under sections 1371
184.10 to 184.20 and 184.37 of the Revised Code, the commission 1372
shall do all of the following: 1373

(1) Establish a competitive process for the award of grants 1374
and loans that is designed to fund the most meritorious proposals 1375
and, when appropriate, provide for peer review of proposals; 1376

(2) Within ninety days after the end of each fiscal year, 1377
submit to the governor and the general assembly a report of the 1378
activities of the commission during the preceding fiscal year; 1379

(3) With specific application to the biomedical research and 1380
technology transfer trust fund, periodically make strategic 1381
assessments of the types of state investments in biomedical 1382
research and biotechnology in the state that would likely create 1383
jobs and business opportunities in the state and produce the most 1384
beneficial long-term improvements to the public health of Ohioans, 1385
including, but not limited to, biomedical research and 1386
biotechnology initiatives that address tobacco-related illnesses 1387
as may be outlined in any master agreement. The commission shall 1388
award grants and loans from the fund pursuant to a process 1389
established under division (B)(1) of this section. 1390

Section 2. That existing sections 121.22, 122.15, 122.151, 1391
122.152, 122.153, 122.154, 122.28, 122.30, 122.31, 122.32, 122.33, 1392
122.34, 122.35, 122.36, 150.03, 150.05, 150.07, 150.10, and 184.02 1393
and section 122.29 of the Revised Code are hereby repealed. 1394

Section 3. Section 122.33 of the Revised Code is presented in 1395
this act as a composite of the section as amended by both Am. Sub. 1396
H.B. 117 and Am. Sub. H.B. 356 of the 121st General Assembly. The 1397
General Assembly, applying the principle stated in division (B) of 1398
section 1.52 of the Revised Code that amendments are to be 1399
harmonized if reasonably capable of simultaneous operation, finds 1400
that the composite is the resulting version of the section in 1401
effect prior to the effective date of the section as presented in 1402
this act. 1403

Section 4. The amendment by this act of sections 121.22,	1404
122.15, 122.151, 122.152, 122.153, 122.154, 122.28, 122.30,	1405
122.31, 122.32, 122.33, 122.34, 122.35, 122.36, and 184.02 of the	1406
Revised Code, and the repeal by this act of section 122.29 of the	1407
Revised Code, take effect on October 1, 2012.	1408