

**As Reported by the House Ways and Means Committee**

**129th General Assembly**

**Regular Session**

**2011-2012**

**Sub. H. B. No. 511**

**Representatives Beck, Gonzales**

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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 decision-making body of a state agency, institution, or authority, and any legislative authority or board, commission, committee, council, agency, authority, or similar decision-making body of any county, township, municipal corporation, school district, or other political subdivision or local public institution;	22 23 24 25 26 27
(b) Any committee or subcommittee of a body described in division (B)(1)(a) of this section;	28 29
(c) A court of jurisdiction of a sanitary district organized wholly for the purpose of providing a water supply for domestic, municipal, and public use when meeting for the purpose of the appointment, removal, or reappointment of a member of the board of directors of such a district pursuant to section 6115.10 of the Revised Code, if applicable, or for any other matter related to such a district other than litigation involving the district. As used in division (B)(1)(c) of this section, "court of jurisdiction" has the same meaning as "court" in section 6115.01 of the Revised Code.	30 31 32 33 34 35 36 37 38 39
(2) "Meeting" means any prearranged discussion of the public business of the public body by a majority of its members.	40 41
(3) "Regulated individual" means either of the following:	42
(a) A student in a state or local public educational institution;	43 44
(b) A person who is, voluntarily or involuntarily, an inmate, patient, or resident of a state or local institution because of criminal behavior, mental illness or retardation, disease, disability, age, or other condition requiring custodial care.	45 46 47 48
(4) "Public office" has the same meaning as in section 149.011 of the Revised Code.	49 50

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

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

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

(1) A grand jury;

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

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

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

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

(6) The state medical board when determining whether to suspend a certificate without a prior hearing pursuant to division (G) of either section 4730.25 or 4731.22 of the Revised Code;

(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;

(8) The state board of pharmacy when determining whether to

suspend a license without a prior hearing pursuant to division (D) 81  
of section 4729.16 of the Revised Code; 82

(9) The state chiropractic board when determining whether to 83  
suspend a license without a hearing pursuant to section 4734.37 of 84  
the Revised Code; 85

(10) The executive committee of the emergency response 86  
commission when determining whether to issue an enforcement order 87  
or request that a civil action, civil penalty action, or criminal 88  
action be brought to enforce Chapter 3750. of the Revised Code; 89

(11) The board of directors of the nonprofit corporation 90  
formed under section 187.01 of the Revised Code or any committee 91  
thereof, and the board of directors of any subsidiary of that 92  
corporation or a committee thereof; 93

(12) An audit conference conducted by the audit staff of the 94  
department of job and family services with officials of the public 95  
office that is the subject of that audit under section 5101.37 of 96  
the Revised Code. 97

(E) The controlling board, the development financing advisory 98  
council, the ~~industrial technology and enterprise advisory council~~ 99  
third frontier commission, the tax credit authority, or the 100  
minority development financing advisory board, when meeting to 101  
consider granting assistance pursuant to Chapter 122. or 166. of 102  
the Revised Code, in order to protect the interest of the 103  
applicant or the possible investment of public funds, by unanimous 104  
vote of all board, council, commission, or authority members 105  
present, may close the meeting during consideration of the 106  
following information confidentially received by the authority, 107  
council, commission, 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 shall not hold an executive session when meeting for the purposes specified in that division.

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

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

(2)(a) If the court of common pleas issues an injunction pursuant to division (I)(1) of this section, the court shall order the public body that it enjoins to pay a civil forfeiture of five hundred dollars to the party that sought the injunction and shall award to that party all court costs and, subject to reduction as described in division (I)(2) of this section, reasonable attorney's fees. The court, in its discretion, may reduce an award of attorney's fees to the party that sought the injunction or not award attorney's fees to that party if the court determines both of the following:

(i) That, based on the ordinary application of statutory law and case law as it existed at the time of violation or threatened



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 264  
sections 5901.01 to 5901.15 of the Revised Code; 265

(b) Discussing applications, statements, and other documents 266  
described in division (B) of section 5901.09 of the Revised Code; 267

(c) Reviewing matters relating to an applicant's request for financial assistance under sections 5901.01 to 5901.15 of the Revised Code.

(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.

(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.

**Sec. 122.15.** As used in sections 122.15 to 122.154 of the Revised Code:

(A) "~~Edison center~~ Director" means a ~~cooperative research and development facility that receives funding through the Thomas Alva Edison grant program under division (C) of section 122.33~~ director of the Revised Code development.

(B) "Ohio entity" means any corporation, limited liability company, or unincorporated business organization, including a general or limited partnership, that has its principal place of business located in this state and has at least fifty per cent of its gross assets and fifty per cent of its employees located in this state. If a corporation, limited liability company, or unincorporated business organization is a member of an affiliated

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 of the Revised Code.	331 332
(b) "Hospital" has the same meaning as in section 3727.01 of the Revised Code.	333 334
(D) "Information technology" means the branch of technology devoted to the study and application of data and the processing thereof; the automatic acquisition, storage, manipulation or transformation, management, movement, control, display, switching, interchange, transmission or reception of data, and the development or use of hardware, software, firmware, and procedures associated with this processing. Information technology includes matters concerned with the furtherance of computer science and technology, design, development, installation and implementation of information systems and applications that in turn will be licensed or sold to a specific target market. Information technology does not include the creation of a distribution method for existing products and services.	335 336 337 338 339 340 341 342 343 344 345 346 347
(E) "Insider" means an individual who owns, controls, or holds power to vote five per cent or more of the outstanding securities of a business. For purposes of determining whether an investor is an insider, the percentage of voting power in the Ohio entity held by a person related to the investor shall be added to the investor's percentage of voting power in the same Ohio entity, if the investor claimed the person related to the investor as a dependent or a spouse on the investor's federal income tax return for the previous tax year.	348 349 350 351 352 353 354 355 356
(F) "Related to" means being the spouse, parent, child, or sibling of an individual.	357 358
(G) "Research and development" means designing, creating, or formulating new or enhanced products, equipment, or processes, and	359 360

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  
~~council~~ 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 ~~council~~ 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  
~~council~~ ~~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 Revised Code to accomplish the following purposes which are determined to be essential:

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

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

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

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

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

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

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

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

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

(1) Receive applications for assistance under sections 122.28 and 122.30 to 122.36 of the Revised Code and, after processing, forward them to the ~~council~~ commission together with necessary supporting information;

(2) Receive the recommendations of the ~~council~~ commission and make a final determination whether to approve the application for

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,	819
agriculture, educational institutions, federal agencies, and state	820
agencies, with special emphasis on industrial research and new	821
technology by small businesses and agribusiness;	822
(10) Participate with any state agency in developing specific	823
programs and goals to assist in the development of industrial	824

research and new technology and monitor performance; 825

(11) Assist enterprises in obtaining alternative forms of 826  
governmental or commercial financing for industrial research and 827  
new technology; 828

(12) Assist enterprises or individuals in the implementation 829  
of new programs and policies and the expansion of existing 830  
programs to provide an atmosphere conducive to increased 831  
cooperation among and participation by individuals, enterprises, 832  
and educational institutions engaged in industrial research and 833  
the development of new technology; 834

(13) Advertise, prepare, print, and distribute books, maps, 835  
pamphlets, and other information which in the judgment of the 836  
director will further its purposes; 837

(14) Include in the director's annual report to the governor 838  
and the general assembly a report on the activities for the 839  
preceding calendar year under sections 122.28 and 122.30 to 122.36 840  
of the Revised Code; 841

(15) Approve the expenditure of money appropriated by the 842  
general assembly for the purpose of sections 122.28 and 122.30 to 843  
122.36 of the Revised Code; 844

(16) Identify and implement federal research and development 845  
programs which would link Ohio's industrial base, research 846  
facilities, and natural resources; 847

(17) Employ and fix the compensation of technical and 848  
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 122.28 and 122.30 to 122.36 of the Revised Code will be in all respects for the benefit of the people of the state, for the improvement of commerce and prosperity, improvement of employment conditions, and will constitute the performance of essential governmental functions.

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

**Sec. 122.36.** Any materials or data submitted to, made available to, or received by the director of development, the ~~industrial technology and enterprise advisory council~~ third frontier commission, or the controlling board, to the extent that the material or data consist of trade secrets, as defined in section 1333.61 of the Revised Code, or commercial or financial information, regarding projects are not public records for the purposes of section 149.43 of the Revised Code.

**Sec. 150.03.** Within ninety days after April 9, 2003, the authority shall establish, and subsequently may modify as it considers necessary, a written investment policy governing the investment of money from the program fund, which is hereby



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 employed by the program administrator shall not invest money from the program fund in a venture capital fund to the extent that the total amount of program fund money invested in the venture capital fund, when combined with any program fund money invested in a venture capital fund under the same management as, and formed within two years before or after the formation of, that venture capital fund, exceeds the lesser of the following:

(1) Ten million dollars;

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

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

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

(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 1041  
on allowable investments that the authority considers reasonable 1042  
and necessary to achieve the purposes of this chapter as stated in 1043  
division (B) of section 150.01 of the Revised Code, minimize the 1044  
need for the authority to grant tax credits under section 150.07 1045  
of the Revised Code, ensure compliance of the program 1046  
administrators with all applicable laws of this state and the 1047  
United States, and ensure the safety and soundness of investments 1048  
of money from the program fund. 1049

(J) It prohibits the investment of money from the program 1050  
fund directly in persons other than venture capital funds, except 1051  
for temporary investment in investment grade debt securities or 1052  
temporary deposit in interest-bearing accounts or funds pending 1053  
permanent investment in venture capital funds. 1054

**Sec. 150.05.** (A) The authority shall select, as program 1055  
administrators, not more than two private, for-profit investment 1056  
funds to acquire loans for the program fund and to invest money in 1057  
the program fund as prescribed in the investment policy 1058  
established or modified by the authority in accordance with 1059  
sections 150.03 and 150.04 of the Revised Code. The authority 1060  
shall give equal consideration, in selecting these program 1061  
administrators, to minority owned and controlled investment funds, 1062  
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 1188  
manager employed by the program administrator must have a 1189  
significant presence in this state, and define how a significant 1190  
presence in this state shall be determined. 1191

**Sec. 150.07.** (A) For the purpose stated in section 150.01 of 1192  
the Revised Code, the authority may authorize a lender to claim 1193  
one of the refundable tax credits allowed under section 5707.031, 1194  
5725.19, 5727.241, 5729.08, 5733.49, or 5747.80 of the Revised 1195  
Code. The credits shall be authorized by a written contract with 1196

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 policy, the authority shall issue a tax credit certificate to the lender, except as otherwise provided in division (D) of this section.

(2) If the lender is a pass-through entity, as defined in section 5733.04 of the Revised Code, then each equity investor in the lender pass-through entity shall be entitled to claim one of the tax credits allowed under division (A) of this section for that equity investor's taxable year in which or with which ends



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