As Introduced

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Representatives Gonzales, Terhar

Cosponsors: Representatives Brenner, Hackett, Henne

A B I L L

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

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

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

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

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

(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;

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

(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.

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

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

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

(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.

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

(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) of section 4729.16 of the Revised Code;

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

(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;

(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;

(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.

(E) The controlling board, the industrial technology and enterprise advisory council, 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, commission, or authority members present, may close the meeting during consideration of the following information confidentially received by the authority, council, commission, or board from the applicant:

(1) Marketing plans;

(2) Specific business strategy;
(3) Production techniques and trade secrets;

(4) Financial projections;

(5) Personal financial statements of the applicant or members of the applicant's immediate family, including, but not limited to, tax records or other similar information not open to public inspection.

The vote by the authority, council, commission, or board to accept or reject the application, as well as all proceedings of the authority, council, commission, or board not subject to this division, shall be open to the public and governed by this section.

(F) Every public body, by rule, shall establish a reasonable method whereby any person may determine the time and place of all regularly scheduled meetings and the time, place, and purpose of all special meetings. A public body shall not hold a special meeting unless it gives at least twenty-four hours' advance notice to the news media that have requested notification, except in the event of an emergency requiring immediate official action. In the event of an emergency, the member or members calling the meeting shall notify the news media that have requested notification immediately of the time, place, and purpose of the meeting.

The rule shall provide that any person, upon request and payment of a reasonable fee, may obtain reasonable advance notification of all meetings at which any specific type of public business is to be discussed. Provisions for advance notification may include, but are not limited to, mailing the agenda of meetings to all subscribers on a mailing list or mailing notices in self-addressed, stamped envelopes provided by the person.

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

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

2. To consider the purchase of property for public purposes, or for the sale of property at competitive bidding, if premature disclosure of information would give an unfair competitive or bargaining advantage to a person whose personal, private interest is adverse to the general public interest. No member of a public body shall use division (G)(2) of this section as a subterfuge for providing covert information to prospective buyers or sellers. A purchase or sale of public property is void if the seller or buyer of the public property has received covert information from a member of a public body that has not been disclosed to the general public in sufficient time for other prospective buyers and sellers to prepare and submit offers.

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

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

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

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

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

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

If a public body holds an executive session to consider any of the matters listed in divisions (G)(2) to (7) of this section, the motion and vote to hold that executive session shall state which one or more of the approved matters listed in those divisions are to be considered at the executive session.
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 public body reasonably would believe that the public body was not violating or threatening to violate this section;

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

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

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

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

(J)(1) Pursuant to division (C) of section 5901.09 of the Revised Code, a veterans service commission shall hold an executive session for one or more of the following purposes unless an applicant requests a public hearing:

(a) Interviewing an applicant for financial assistance under sections 5901.01 to 5901.15 of the Revised Code;

(b) Discussing applications, statements, and other documents described in division (B) of section 5901.09 of the Revised Code;
(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 members of that affiliated group, wherever those assets and employees are located, shall be included for the purpose of determining the percentage of the corporation's, company's, or organization's gross assets and employees that are located in this state.

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

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

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

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

(4) Any business involving the production or extraction of products of a character with respect to which a deduction is allowable under section 611, 613, or 613A of the "Internal Revenue Code of 1986," 100 Stat. 2085, 26 U.S.C.A. 611, 613, or 613A;

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

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

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

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

(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.

(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.

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

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

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

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

(J) "Affiliated group" means two or more persons related in such a way that one of the persons owns or controls the business operations of another of those persons. In the case of a corporation issuing capital stock, one corporation owns or controls the business operations of another corporation if it owns more than fifty per cent of the other corporation's capital stock with voting rights. In the case of a limited liability company, one person owns or controls the business operations of the company if that person's membership interest, as defined in section 1705.01 of the Revised Code, is greater than fifty per cent of combined membership interest of all persons owning such interests in the company. In the case of an unincorporated business organization, one person owns or controls the business operations of the organization if, under the articles of organization or other instrument governing the affairs of the organization, that person has a beneficial interest in the organization's profits, surpluses, losses, or other distributions greater than fifty per cent of the combined beneficial interests of all persons having such an interest in the organization.
(K) "Money" means United States currency, or a check, draft, or cashier's check for United States currency, payable on demand and drawn on a bank.

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

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

Sec. 122.151. (A) An investor who proposes to make an investment of money in an Ohio entity may apply to an Edison center the director for a tax credit under this section. The Edison center director shall prescribe the form of the application and any information that the investor must submit with the application. The investor shall include with the application a fee of two hundred dollars. The center director, within three four weeks after receiving the application, shall review it, determine whether the investor should be recommended for the tax credit, and send written notice of the director's initial determination to the industrial technology and enterprise advisory council third frontier commission established under section 184.01 of the Revised Code and to the investor. If the center director determines the investor should not be recommended for the tax credit, the center director shall include in the notice the reasons for the determination. Subject to divisions (C) and (D) of this section, an investor is eligible for a tax credit if all of the following requirements are met:

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

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

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

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

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

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

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

(8) The investor is not an employee with proprietary decision-making authority of the Ohio entity in which the investment of money is proposed, or related to such an individual. The Ohio entity is not an individual related to the investor. For purposes of this division, the industrial technology and enterprise advisory council director shall define "an employee with proprietary decision-making authority."

(9) The investor is not an insider.

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

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

(B) A group of two but not more than twenty investors, each of whom proposes to make an investment of money in the same Ohio entity, may submit an application for tax credits under division (A) of this section. The group shall include with the application a fee of eight hundred dollars. The application shall identify each investor in the group and the amount of money each investor proposes to invest in the Ohio entity, and shall name a contact person for the group. The Edison center director, within three or four weeks after receiving the application, shall review it, determine whether each investor of the group should be recommended for a tax credit under the conditions set forth in division (A) of this section, and send written notice of its determination to the industrial technology and enterprise advisory council commission and to the contact person. The center director shall not recommend that a group of investors receive a tax credit unless each investor is eligible under those conditions. The center director may disqualify from a group any investor who is not eligible under the conditions and recommend that the remaining group of investors receive the tax credit. If the center director determines the group should not be recommended for the tax credit,
the director shall include in the notice the reasons for the determination.

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

(D)(1) The industrial technology and enterprise advisory council commission shall not approve more than one million five hundred thousand dollars of investments in any one Ohio entity. However, if a proposed investment of money in an Ohio entity has been approved but the investor does not actually make the investment, the committee commission may reassign the amount of that investment to another investor, as long as the total amount invested in the entity under this section does not exceed one million five hundred thousand dollars.

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

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

(E) If an investor makes an approved investment of less than two hundred fifty thousand dollars in any Ohio entity other than an EDGE business enterprise or in an Ohio entity located in a distressed area, the investor may apply for approval of another investment of money in that entity, as long as the total amount invested in that entity by the investor under this section does not exceed two hundred fifty thousand dollars. If an investor makes an approved investment of less than three hundred thousand dollars in an EDGE business enterprise or in an Ohio entity located in a distressed area, the investor may apply for approval of another investment of money in that entity, as long as the total amount invested in that entity by the investor under this section does not exceed three hundred thousand dollars. An investor who receives approval of an investment of money as part of a group may subsequently apply on an individual basis for approval of an additional investment of money in the Ohio entity.

(F) The industrial technology and enterprise advisory council committee commission shall approve or disapprove tax credit applications under this section in the order in which they are received by the council commission.

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

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

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

Sec. 122.152. (A) After receiving notice of approval for an investment of money from the industrial technology and enterprise advisory council committee third frontier commission under section 122.151 of the Revised Code, an investor, within a period of time determined by the committee commission, may make the investment and apply to the council commission for a tax credit certificate. If the committee commission is satisfied the investor has made the investment in the proper form, it shall issue to the investor a tax credit certificate signed by the chairperson of the committee commission and the director of development indicating that the investor is allowed a tax credit equal to one of the following
amounts:

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

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

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

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

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

(2) If the credit to which a taxpayer otherwise would be entitled under this section for any taxable year is greater than the tax otherwise due under section 5747.02 or Chapter 5733. of the Revised Code, after allowing for any other credits that precede the credit allowed under this section in the order required under section 5733.98 or 5747.98 of the Revised Code, the excess shall be allowed as a credit in each of the ensuing fifteen taxable years, but the amount of any excess credit allowed in an ensuing taxable year shall be deducted from the balance carried
forward to the next taxable year.

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

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

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

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

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

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

(H) An investment made by an investor or group of investors who enter into a contractual agreement with an Ohio entity to invest money in the Ohio entity is an acceptable investment if all of the following conditions are met:

(1) The investment is made pursuant to a subscription agreement providing that the investor or group of investors is entitled to receive a refund of funds if the investment is not approved by the industrial technology and enterprise advisory council commission.
(2) The investment is placed in escrow until the investment is approved by the industrial technology and enterprise advisory council committee commission.

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

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

If the committee commission determines the investor submitted false information, it may revoke any remaining tax credit available to the investor. The committee commission shall send written notice of the revocation to the investor and the tax commissioner. The tax commissioner may make an assessment against the investor to recapture any amount of tax credit that the investor already has claimed. The time limitations on assessments under the laws of the particular tax against which the investor claimed the credit do not apply to an assessment under this section.

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

Within four weeks after the council commission receives a notice of recommendation from an Edison center the director, the industrial technology and enterprise advisory council committee established under section 122.152 of the Revised Code commission shall review the recommendation and issue a final determination of whether the business is an Ohio entity eligible to receive investments of money under section 122.151 of the Revised Code that qualify an investor for a tax credit under section 122.152 of the Revised Code. The committee commission may require the business to submit additional information to support the application. The vote of at least two members of the committee is necessary for the issuance of a final determination. On making the final determination, the committee commission shall send written notice of approval or disapproval to the business, and the director of development, and the Edison center. If the committee commission determines that the business is not an Ohio entity
eligible to receive investments of money that qualify for the tax credit, it shall include in the notice the reasons for the determination.

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

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

(D) The director shall use fees received under this section only for the costs of administering sections 122.15 to 122.154 of the Revised Code.

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

An investor in an Ohio entity is solely responsible for due diligence in verifying information submitted by an Ohio entity. The department is not liable for any action resulting from its provision of such information to investors in accordance with sections 122.15 to 122.154 of the Revised Code.

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

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

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

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

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

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

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

Sec. 122.30. The industrial technology and enterprise advisory council third frontier commission established in section 184.01 of the Revised Code and the director of development are vested with the powers and duties provided in sections 122.28 and 122.30 to 122.36 of the Revised Code, to promote the welfare of the people of the state through the interaction of the business and industrial community and educational institutions in the development of new technology and enterprise.

(A) It is necessary for the state to establish the industrial technology and enterprise advisory council and the programs

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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 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;

(3) Transmit determinations to approve assistance exceeding forty thousand dollars to the controlling board, together with any information the controlling board requires, for the board's review and decision as to whether to approve the assistance;

(4) Gather and disseminate information and conduct hearings, conferences, seminars, investigations, and special studies on problems and programs concerning industrial research and new technology and their commercial applications in the state;

(5) Establish an annual program to recognize the accomplishments and contributions of individuals and organizations in the development of industrial research and new technology in the state;

(6) Stimulate both public and industrial awareness and interest in industrial research and development of new technology primarily in the areas of industrial processes, implementation, energy, agribusiness, medical technology, avionics, and food processing;

(7) Develop and implement comprehensive and coordinated policies, programs, and procedures promoting industrial research and new technology;

(8) Propose appropriate legislation or executive actions to stimulate the development of industrial research and new technology by enterprises and individuals;

(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 service, and employ other personnel, who shall be in the classified civil service, as necessary to carry out the provisions of sections 122.28 and 122.30 to 122.36 of the Revised Code.

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

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

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

(A) The industrial technology and enterprise development grant program, to provide capital to acquire, construct, enlarge, improve, or equip and to sell, lease, exchange, and otherwise dispose of property, structures, equipment, and facilities within the state.
Such funding may be made to enterprises that propose to
develop new products or technologies when the director finds all
of the following factors to be present:

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

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

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

(B) The industrial technology and enterprise resources
program to provide for the collection, dissemination, and exchange
of information regarding equipment, facilities, and business
planning consultation resources available in business, industry,
and educational institutions and to establish methods by which
small businesses may use available facilities and resources. The
methods may include, but need not be limited to, leases
reimbursing the educational institutions for their actual costs
incurred in maintaining the facilities and agreements assigning
royalties from development of successful products or processes
through the use of the facilities and resources. The director
shall operate this program in conjunction with the board of
regents.
(C) The Thomas Alva Edison grant program to provide grants to foster research, development, or technology transfer efforts involving enterprises and educational institutions that will lead to the creation of jobs.

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

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

(3) Grants made under this program shall in all instances be in conjunction with a contribution to the project by a cooperating enterprise which maintains or proposes to maintain a relevant research, development, or manufacturing facility in the state, by a nonprofit organization, or by an educational institution or related entity; however, funding provided by an educational institution or related entity shall not be from general revenue funds appropriated by the Ohio general assembly. No grant made under this program shall exceed the contribution made by the cooperating enterprise, nonprofit organization, or educational institution or related entity. The director may consider cooperating contributions in the form of state of the art new equipment or in other forms provided the director determines that the contribution is essential to the successful implementation of the project. The director may adopt rules or guidelines for the valuation of contributions of equipment or other property.

(4) The director may determine fields of research from which grant applications will be accepted under this program.
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 acquired by a program administrator. The authority is subject to Chapter 119. of the Revised Code with respect to the establishment or modification of the policy. The policy shall meet all the following requirements:

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

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

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

(D) It specifies both of the following:

(1) That not less than an amount equal to fifty per cent of program fund money invested in any venture capital fund be invested by the venture capital fund in Ohio-based business enterprises;

(2) That, commencing with the first program fund commitment to each venture capital fund, the aggregate amount funded into Ohio-based business enterprises by all venture capital funds to which the program fund has committed be not less than the aggregate amount of all program fund money funded into those venture capital funds.
(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 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 minority owned and controlled funds, and to ventures involving funds owned and controlled by women that otherwise meet the policies and criteria established by the authority. To be eligible for selection, an investment fund must be incorporated or organized under Chapter 1701., 1705., 1775., 1776., 1782., or 1783. of the Revised Code, must have an established business presence in this state, and must be capitalized in accordance with any state and federal laws applicable to the issuance or sale of securities.
The authority shall select program administrators only after soliciting and evaluating requests for proposals as prescribed in this section. The authority shall publish a notice of a request for proposals in newspapers of general circulation in this state once each week for two consecutive weeks before a date specified by the authority as the date on which it will begin accepting proposals. The notices shall contain a general description of the subject of the proposed agreement and the location where the request for proposals may be obtained. The request for proposals shall include all the following:

1. Instructions and information to respondents concerning the submission of proposals, including the name and address of the office where proposals are to be submitted;

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

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

4. Description of the factors and criteria to be considered in evaluating respondents' proposals, which shall include the past performance of the respondent in successfully administering similar programs and achieving positive investment returns, the relative importance of each factor or criterion, and description of the authority's evaluation procedure;

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

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

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

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

The agreement shall do all of the following:

(1) Specify that borrowing and investing by the program administrator will be budgeted to guarantee that no tax credits will be granted during the first four years of the Ohio venture capital program, and will be structured to ensure that payments of principal, interest, or interest equivalent due in any fiscal year, when added to such payments due from any other program administrator, does not exceed twenty-twenty-six million five hundred thousand dollars;

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

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

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

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

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

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

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

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

(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, 5726.53, 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 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 based on the equity investor's distributive or proportionate share of the credit amount set forth in the certificate issued by the authority. If all equity investors of the lender pass-through entity are not eligible to claim a credit against the same tax set forth in division (A) of this section, then each equity investor may elect to claim a credit against the tax to which the equity investor is subject to in an amount based on the equity investor's distributive or proportionate share of the credit amount set forth in the certificate issued by the authority.

(3) The certificate shall state the amount of the credit and the calendar year under section 5707.031, 5725.19, 5727.241, or 5729.08, the tax year under section 5726.53 or 5733.49, or the taxable year under section 5747.80 of the Revised Code for which the credit may be claimed. The authority, in conjunction with the tax commissioner, shall develop a system for issuing tax credit certificates for the purpose of verifying that any credit claimed is a credit issued under this section and is properly taken in the year specified in the certificate and in compliance with division (B) of this section.

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

(E) Notwithstanding any other section of this chapter or any provision of Chapter 5707., 5725., 5726., 5727., 5729., 5733., or 5747. of the Revised Code, if provided by the terms of an agreement entered into by the issuer and the authority under division (E) of section 150.02 of the Revised Code, and subject to...
the limitations of divisions (B) and (D) of this section, a trustee shall have the right, for the benefit of the issuer, to receive and claim the credits authorized under division (A) of this section solely for the purpose provided for in section 150.04 of the Revised Code, and the trustee shall be entitled to file a tax return, an amended tax return, or an estimated tax return at such times as are permitted or required under the applicable provisions of Chapter 5707., 5725., 5726., 5727., 5729., 5733., or 5747. of the Revised Code for the purpose of claiming credits issued to the trustee. The trustee shall receive the proceeds of such a tax credit for the benefit of the issuer, and shall apply the proceeds solely to satisfy a loss or restore a reserve as provided in section 150.04 of the Revised Code. Nothing in this section shall require a trustee to file a tax return under any chapter for any purpose other than claiming such credits if the trustee is not otherwise required to make such a filing.

The general assembly may from time to time modify or repeal any of the taxes against which the credits authorized under division (A) of this section may be claimed, and may authorize those credits to be claimed for the purposes provided for in section 150.04 of the Revised Code with respect to any other tax imposed by this state; provided, that if any obligations issued under section 4582.71 of the Revised Code are then outstanding and such modification or repeal would have the effect of impairing any covenant made in or pursuant to an agreement under division (E) of section 150.02 of the Revised Code regarding the maintenance or restoration of reserves established and maintained with a trustee consistent with division (B)(2) of section 150.04 of the Revised Code and such agreement, the state shall provide other security to the extent necessary to avoid or offset the impairment of such covenant.

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

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

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

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

(4) The amount of tax credits claimed pursuant to section 5707.031, 5725.19, 5726.53, 5727.241, 5729.08, 5733.49, or 5747.80 of the Revised Code, as to the respective taxes involved;

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

(6) The names of venture capital funds in which money from the program fund has been invested and the locations of their principal offices, and the names of the enterprises in which each of those venture capital funds has invested such money and the locations of those enterprises' principal offices, and the amount of investment by those funds in Ohio-based business enterprises. For such Ohio-based business enterprises, the report shall indicate the development stage, as that term is defined by the authority, of each enterprise on the date a venture capital fund
first invests money from the program fund in the enterprise, the aggregate amount of program funds invested in such enterprises from every investment round, and the sources of any funding secured by such enterprises after a venture capital fund first invests money from the program fund in the enterprise;

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

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

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

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

Sec. 184.02. (A) In addition to the powers and duties under sections 121.22, 122.15 to 122.154, 122.28, 122.30 to 122.36, 184.10 to 184.20, and 184.37 of the Revised Code, the third frontier commission may perform any act to ensure the performance of any function necessary or appropriate to carry out the purposes of, and exercise the powers granted under, sections 184.01 and 184.02 of the Revised Code. In addition, the commission may do any of the following:
(1) Adopt, amend, and rescind rules under section 111.15 of the Revised Code for the administration of any aspect of its operations;

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

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

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

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

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

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

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

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

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

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

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

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

Section 4. The amendment by this act of sections 121.22, 122.15, 122.151, 122.152, 122.153, 122.154, 122.28, 122.30, 122.31, 122.32, 122.33, 122.34, 122.35, 122.36, and 184.02 of the Revised Code, and the repeal by this act of section 122.29 of the Revised Code, take effect on October 1, 2013.