

As Introduced

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Representatives Beck, Adams, J.

Cosponsors: Representatives Milkovich, Retherford

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A B I L L

To amend sections 122.17 and 122.171 of the Revised 1
Code to reduce the job retention and capital 2
investment requirements of the Job Retention Tax 3
Credit for businesses in targeted areas or 4
industries, to require that a Job Creation or 5
Retention Tax Credit awarded to such a business 6
equal 100% of its new or retained income tax 7
withholding, and to modify the credits' annual 8
report requirement to provide that employers must 9
submit reports only if required by the Director of 10
Development Services. 11

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

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

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

(1) "Income tax revenue" means the total amount withheld 15
under section 5747.06 of the Revised Code by the taxpayer during 16
the taxable year, or during the calendar year that includes the 17
tax period, from the compensation of each employee or each 18
home-based employee employed in the project to the extent the 19

employee's withholdings are not used to determine the credit under 20
section 122.171 of the Revised Code. "Income tax revenue" excludes 21
amounts withheld before the day the taxpayer becomes eligible for 22
the credit. 23

(2) "Baseline income tax revenue" means income tax revenue 24
except that the applicable withholding period is the twelve months 25
immediately preceding the date the tax credit authority approves 26
the taxpayer's application or the date the tax credit authority 27
receives the recommendation described in division (C)(2)(a) of 28
this section, whichever occurs first, multiplied by the sum of one 29
plus an annual pay increase factor to be determined by the tax 30
credit authority. 31

(3) "Excess income tax revenue" means income tax revenue 32
minus baseline income tax revenue. 33

(4) "Home-based employee" means an employee whose services 34
are performed primarily from the employee's residence in this 35
state exclusively for the benefit of the project and whose rate of 36
pay is at least one hundred thirty-one per cent of the federal 37
minimum wage under 29 U.S.C. 206. 38

(5) "Distressed area" has the same meaning as in section 39
122.16 of the Revised Code. 40

(6) "Targeted industry" means the information technology, 41
manufacturing, automobile, or aerospace industry. 42

(B) The tax credit authority may make grants under this 43
section to foster job creation in this state. Such a grant shall 44
take the form of a refundable credit allowed against the tax 45
imposed by section 5725.18, 5726.02, 5729.03, 5733.06, 5736.02, or 46
5747.02 or levied under Chapter 5751. of the Revised Code. The 47
credit shall be claimed for the taxable years or tax periods 48
specified in the taxpayer's agreement with the tax credit 49
authority under division (D) of this section. With respect to 50

taxes imposed under section 5726.02, 5733.06, or 5747.02 or 51
Chapter 5751. of the Revised Code, the credit shall be claimed in 52
the order required under section 5726.98, 5733.98, 5747.98, or 53
5751.98 of the Revised Code. The amount of the credit available 54
for a taxable year or for a calendar year that includes a tax 55
period equals the excess income tax revenue for that year 56
multiplied by the percentage specified in the agreement with the 57
tax credit authority. If the project site is located in a 58
distressed area, or if the taxpayer is engaged at the project site 59
primarily in a targeted industry, the percentage shall equal one 60
hundred per cent. Any credit granted under this section against 61
the tax imposed by section 5733.06 or 5747.02 of the Revised Code, 62
to the extent not fully utilized against such tax for taxable 63
years ending prior to 2008, shall automatically be converted 64
without any action taken by the tax credit authority to a credit 65
against the tax levied under Chapter 5751. of the Revised Code for 66
tax periods beginning on or after July 1, 2008, provided that the 67
person to whom the credit was granted is subject to such tax. The 68
converted credit shall apply to those calendar years in which the 69
remaining taxable years specified in the agreement end. 70

(C)(1) A taxpayer or potential taxpayer who proposes a 71
project to create new jobs in this state may apply to the tax 72
credit authority to enter into an agreement for a tax credit under 73
this section. 74

An application shall not propose to include both home-based 75
employees and employees who are not home-based employees in the 76
computation of income tax revenue for the purposes of the same tax 77
credit agreement. If a taxpayer or potential taxpayer employs both 78
home-based employees and employees who are not home-based 79
employees in a project, the taxpayer shall submit separate 80
applications for separate tax credit agreements for the project, 81
one of which shall include home-based employees in the computation 82

of income tax revenue and one of which shall include all other 83
employees in the computation of income tax revenue. 84

The director of development services shall prescribe the form 85
of the application. After receipt of an application, the authority 86
may enter into an agreement with the taxpayer for a credit under 87
this section if it determines all of the following: 88

(a) The taxpayer's project will increase payroll and income 89
tax revenue; 90

(b) The taxpayer's project is economically sound and will 91
yield a net positive benefit to the people of this state by 92
increasing opportunities for employment and strengthening the 93
economy of this state; 94

(c) Receiving the tax credit is a major factor in the 95
taxpayer's decision to go forward with the project. 96

(2)(a) A taxpayer that chooses to begin the project prior to 97
receiving the determination of the authority may, upon submitting 98
the taxpayer's application to the authority, request that the 99
chief investment officer of the nonprofit corporation formed under 100
section 187.01 of the Revised Code and the director review the 101
taxpayer's application and recommend to the authority that the 102
taxpayer's application be considered. As soon as possible after 103
receiving such a request, the chief investment officer and the 104
director shall review the taxpayer's application and, if they 105
determine that the application warrants consideration by the 106
authority, make that recommendation to the authority not later 107
than six months after the application is received by the 108
authority. 109

(b) The authority shall consider any taxpayer's application 110
for which it receives a recommendation under division (C)(2)(a) of 111
this section. If the authority determines that the taxpayer does 112
not meet all of the criteria set forth in division (C)(1) of this 113

section, the authority and the development services agency shall 114
proceed in accordance with rules adopted by the director pursuant 115
to division (I) of this section. 116

(D) An agreement under this section shall include all of the 117
following: 118

(1) A detailed description of the project that is the subject 119
of the agreement; 120

(2)(a) The term of the tax credit, which, except as provided 121
in division (D)(2)(b) of this section, shall not exceed fifteen 122
years, and the first taxable year, or first calendar year that 123
includes a tax period, for which the credit may be claimed; 124

(b) If the tax credit is computed on the basis of home-based 125
employees, the term of the credit shall expire on or before the 126
last day of the taxable or calendar year ending before the 127
beginning of the seventh year after September 6, 2012, the 128
effective date of H.B. 327 of the 129th general assembly. 129

(3) A requirement that the taxpayer shall maintain operations 130
at the project location for at least the greater of seven years or 131
the term of the credit plus three years; 132

(4) The percentage, as determined by the tax credit 133
authority, of excess income tax revenue that will be allowed as 134
the amount of the credit for each taxable year or for each 135
calendar year that includes a tax period; 136

(5) The pay increase factor to be applied to the taxpayer's 137
baseline income tax revenue; 138

~~(6) A requirement that the taxpayer annually shall report to 139
the director of development services employment, tax withholding, 140
investment, the provision of health care benefits and tuition 141
reimbursement if required in the agreement, and other information 142
the director needs to perform the director's duties under this 143~~

section;	144
(7) A requirement that the director of development services	145
annually review the information reported under division (D)(6) of	146
this section and verify compliance with the agreement; if the	147
taxpayer is in compliance, a requirement that the director issue a	148
certificate to the taxpayer stating that the information has been	149
verified <u>whether the taxpayer is in compliance with the agreement</u>	150
and identifying the amount of the credit that may be claimed for	151
the taxable or calendar year;	152
(8) <u>(7)</u> A provision providing that the taxpayer may not	153
relocate a substantial number of employment positions from	154
elsewhere in this state to the project location unless the	155
director of development services determines that the legislative	156
authority of the county, township, or municipal corporation from	157
which the employment positions would be relocated has been	158
notified by the taxpayer of the relocation.	159
For purposes of this section, the movement of an employment	160
position from one political subdivision to another political	161
subdivision shall be considered a relocation of an employment	162
position unless the employment position in the first political	163
subdivision is replaced.	164
(9) <u>(8)</u> If the tax credit is computed on the basis of	165
home-based employees, that the tax credit may not be claimed by	166
the taxpayer until the taxable year or tax period in which the	167
taxpayer employs at least two hundred employees more than the	168
number of employees the taxpayer employed on June 30, 2011.	169
(E) If a taxpayer fails to meet or comply with any condition	170
or requirement set forth in a tax credit agreement, the tax credit	171
authority may amend the agreement to reduce the percentage or term	172
of the tax credit. The reduction of the percentage or term may	173
take effect in the current taxable or calendar year.	174

(F) Projects that consist solely of point-of-final-purchase retail facilities are not eligible for a tax credit under this section. If a project consists of both point-of-final-purchase retail facilities and nonretail facilities, only the portion of the project consisting of the nonretail facilities is eligible for a tax credit and only the excess income tax revenue from the nonretail facilities shall be considered when computing the amount of the tax credit. If a warehouse facility is part of a point-of-final-purchase retail facility and supplies only that facility, the warehouse facility is not eligible for a tax credit. Catalog distribution centers are not considered point-of-final-purchase retail facilities for the purposes of this division, and are eligible for tax credits under this section.

(G) Financial statements and other information submitted to the development services agency or the tax credit authority by an applicant or recipient of a tax credit under this section, and any information taken for any purpose from such statements or information, are not public records subject to section 149.43 of the Revised Code. However, the chairperson of the authority may make use of the statements and other information for purposes of issuing public reports or in connection with court proceedings concerning tax credit agreements under this section. Upon the request of the tax commissioner or, if the applicant or recipient is an insurance company, upon the request of the superintendent of insurance, the chairperson of the authority shall provide to the commissioner or superintendent any statement or information submitted by an applicant or recipient of a tax credit in connection with the credit. The commissioner or superintendent shall preserve the confidentiality of the statement or information.

(H) A taxpayer claiming a credit under this section shall submit to the tax commissioner or, if the taxpayer is an insurance

company, to the superintendent of insurance, a copy of the 207
director of development services' certificate of verification 208
under division (D)~~(7)~~(6) of this section with the taxpayer's tax 209
report or return for the taxable year or for the calendar year 210
that includes the tax period. Failure to submit a copy of the 211
certificate with the report or return does not invalidate a claim 212
for a credit if the taxpayer submits a copy of the certificate to 213
the commissioner or superintendent within sixty days after the 214
commissioner or superintendent requests it. 215

(I) The director of development services, after consultation 216
with the tax commissioner and the superintendent of insurance and 217
in accordance with Chapter 119. of the Revised Code, shall adopt 218
rules necessary to implement this section, including rules that 219
establish a procedure to be followed by the tax credit authority 220
and the development services agency in the event the authority 221
considers a taxpayer's application for which it receives a 222
recommendation under division (C)(2)(a) of this section but does 223
not approve it. The rules may provide for recipients of tax 224
credits under this section to be charged fees to cover 225
administrative costs of the tax credit program. The fees collected 226
shall be credited to the business assistance fund created in 227
section 122.174 of the Revised Code. At the time the director 228
gives public notice under division (A) of section 119.03 of the 229
Revised Code of the adoption of the rules, the director shall 230
submit copies of the proposed rules to the chairpersons of the 231
standing committees on economic development in the senate and the 232
house of representatives. 233

(J) For the purposes of this section, a taxpayer may include 234
a partnership, a corporation that has made an election under 235
subchapter S of chapter one of subtitle A of the Internal Revenue 236
Code, or any other business entity through which income flows as a 237
distributive share to its owners. A partnership, S-corporation, or 238

other such business entity may elect to pass the credit received 239
under this section through to the persons to whom the income or 240
profit of the partnership, S-corporation, or other entity is 241
distributed. ~~The election shall be made on the annual report~~ 242
~~required under division (D)(6) of this section. The taxpayer shall~~ 243
make the election by annually submitting a notice to the director 244
of development services. The notice may be included in an annual 245
report submitted under division (R) of this section. The election 246
applies to and is irrevocable for the credit for which the ~~report~~ 247
notice is submitted. If the election is made, the credit shall be 248
apportioned among those persons in the same proportions as those 249
in which the income or profit is distributed. 250

(K) If the director of development services determines that a 251
taxpayer who has received a credit under this section is not 252
complying with the requirement under division (D)(3) of this 253
section, the director shall notify the tax credit authority of the 254
noncompliance. After receiving such a notice, and after giving the 255
taxpayer an opportunity to explain the noncompliance, the tax 256
credit authority may require the taxpayer to refund to this state 257
a portion of the credit in accordance with the following: 258

(1) If the taxpayer maintained operations at the project 259
location for a period less than or equal to the term of the 260
credit, an amount not exceeding one hundred per cent of the sum of 261
any credits allowed and received under this section; 262

(2) If the taxpayer maintained operations at the project 263
location for a period longer than the term of the credit, but less 264
than the greater of seven years or the term of the credit plus 265
three years, an amount not exceeding seventy-five per cent of the 266
sum of any credits allowed and received under this section. 267

In determining the portion of the tax credit to be refunded 268
to this state, the tax credit authority shall consider the effect 269
of market conditions on the taxpayer's project and whether the 270

taxpayer continues to maintain other operations in this state. 271
After making the determination, the authority shall certify the 272
amount to be refunded to the tax commissioner or superintendent of 273
insurance, as appropriate. If the amount is certified to the 274
commissioner, the commissioner shall make an assessment for that 275
amount against the taxpayer under Chapter 5726., 5733., 5736., 276
5747., or 5751. of the Revised Code. If the amount is certified to 277
the superintendent, the superintendent shall make an assessment 278
for that amount against the taxpayer under Chapter 5725. or 5729. 279
of the Revised Code. The time limitations on assessments under 280
those chapters do not apply to an assessment under this division, 281
but the commissioner or superintendent, as appropriate, shall make 282
the assessment within one year after the date the authority 283
certifies to the commissioner or superintendent the amount to be 284
refunded. 285

(L) On or before the first day of August each year, the 286
director of development services shall submit a report to the 287
governor, the president of the senate, and the speaker of the 288
house of representatives on the tax credit program under this 289
section. The report shall include information on the number of 290
agreements that were entered into under this section during the 291
preceding calendar year, a description of the project that is the 292
subject of each such agreement, and an update on the status of 293
projects under agreements entered into before the preceding 294
calendar year. 295

(M) There is hereby created the tax credit authority, which 296
consists of the director of development services and four other 297
members appointed as follows: the governor, the president of the 298
senate, and the speaker of the house of representatives each shall 299
appoint one member who shall be a specialist in economic 300
development; the governor also shall appoint a member who is a 301
specialist in taxation. Of the initial appointees, the members 302

appointed by the governor shall serve a term of two years; the 303
members appointed by the president of the senate and the speaker 304
of the house of representatives shall serve a term of four years. 305
Thereafter, terms of office shall be for four years. Initial 306
appointments to the authority shall be made within thirty days 307
after January 13, 1993. Each member shall serve on the authority 308
until the end of the term for which the member was appointed. 309
Vacancies shall be filled in the same manner provided for original 310
appointments. Any member appointed to fill a vacancy occurring 311
prior to the expiration of the term for which the member's 312
predecessor was appointed shall hold office for the remainder of 313
that term. Members may be reappointed to the authority. Members of 314
the authority shall receive their necessary and actual expenses 315
while engaged in the business of the authority. The director of 316
development services shall serve as chairperson of the authority, 317
and the members annually shall elect a vice-chairperson from among 318
themselves. Three members of the authority constitute a quorum to 319
transact and vote on the business of the authority. The majority 320
vote of the membership of the authority is necessary to approve 321
any such business, including the election of the vice-chairperson. 322

The director of development services may appoint a 323
professional employee of the development services agency to serve 324
as the director's substitute at a meeting of the authority. The 325
director shall make the appointment in writing. In the absence of 326
the director from a meeting of the authority, the appointed 327
substitute shall serve as chairperson. In the absence of both the 328
director and the director's substitute from a meeting, the 329
vice-chairperson shall serve as chairperson. 330

(N) For purposes of the credits granted by this section 331
against the taxes imposed under sections 5725.18 and 5729.03 of 332
the Revised Code, "taxable year" means the period covered by the 333
taxpayer's annual statement to the superintendent of insurance. 334

(O) On or before the first day of March of each of the five 335
calendar years beginning with 2014, each taxpayer subject to an 336
agreement with the tax credit authority under this section on the 337
basis of home-based employees shall report the number of 338
home-based employees and other employees employed by the taxpayer 339
in this state to the development services agency. 340

(P) On or before the first day of January of 2019, the 341
director of development services shall submit a report to the 342
governor, the president of the senate, and the speaker of the 343
house of representatives on the effect of agreements entered into 344
under this section in which the taxpayer included home-based 345
employees in the computation of income tax revenue. The report 346
shall include information on the number of such agreements that 347
were entered into in the preceding six years, a description of the 348
projects that were the subjects of such agreements, and an 349
analysis of nationwide home-based employment trends, including the 350
number of home-based jobs created from July 1, 2011, through June 351
30, 2017, and a description of any home-based employment tax 352
incentives provided by other states during that time. 353

(Q) The director of development services may require any 354
agreement entered into under this section for a tax credit 355
computed on the basis of home-based employees to contain a 356
provision that the taxpayer makes available health care benefits 357
and tuition reimbursement to all employees. 358

(R) The director of development services may require a 359
taxpayer subject to an agreement entered into under this section 360
to report annually to the director employment, tax withholding, 361
investment, the provision of health care benefits and tuition 362
reimbursement if required in the agreement, and other information 363
the director needs to perform the director's duties under this 364
section. 365

Sec. 122.171. (A) As used in this section:	366
(1) "Capital investment project" means a plan of investment	367
at a project site for the acquisition, construction, renovation,	368
or repair of buildings, machinery, or equipment, or for	369
capitalized costs of basic research and new product development	370
determined in accordance with generally accepted accounting	371
principles, but does not include any of the following:	372
(a) Payments made for the acquisition of personal property	373
through operating leases;	374
(b) Project costs paid before January 1, 2002;	375
(c) Payments made to a related member as defined in section	376
5733.042 of the Revised Code or to a consolidated elected taxpayer	377
or a combined taxpayer as defined in section 5751.01 of the	378
Revised Code.	379
(2) "Eligible business" means a taxpayer and its related	380
members with Ohio operations satisfying all of the following:	381
(a) <u>The (i) If the project site is located in a distressed</u>	382
<u>area or if the taxpayer is engaged at the project site primarily</u>	383
<u>in a targeted industry, the taxpayer employs at least one hundred</u>	384
<u>full-time equivalent employees or has an annual payroll of at</u>	385
<u>least seven million dollars at the time the tax credit authority</u>	386
<u>grants the tax credit under this section;</u>	387
(ii) <u>If the project is not located in a distressed area and</u>	388
<u>the taxpayer is not engaged at the project site primarily in a</u>	389
<u>targeted industry, the taxpayer employs at least five hundred</u>	390
full-time equivalent employees or has an annual payroll of at	391
least thirty-five million dollars at the time the tax credit	392
authority grants the tax credit under this section.	393
(b) The taxpayer makes or causes to be made payments for the	394
capital investment project of one of the following:	395

(i) If the ~~taxpayer is engaged at the project site primarily~~ 396
~~as a manufacturer~~ project site is located in a distressed area or 397
if the taxpayer is engaged at the project site primarily in a 398
targeted industry, at least ~~fifty~~ twelve million five hundred 399
thousand dollars in the aggregate at the project site during a 400
period of three consecutive calendar years, including the calendar 401
year that includes a day of the taxpayer's taxable year or tax 402
period with respect to which the credit is granted; 403

(ii) If the ~~taxpayer is engaged at the project site~~ project 404
site is not located in a distressed area, and if the taxpayer is 405
not engaged at the project site primarily in a targeted industry 406
but is engaged primarily in significant corporate administrative 407
functions, as defined by the director of development services by 408
rule, at least twenty million dollars in the aggregate at the 409
project site during a period of three consecutive calendar years 410
including the calendar year that includes a day of the taxpayer's 411
taxable year or tax period with respect to which the credit is 412
granted; 413

(iii) If the taxpayer is applying to enter into an agreement 414
for a tax credit authorized under division (B)(3) of this section, 415
at least five million dollars in the aggregate at the project site 416
during a period of three consecutive calendar years, including the 417
calendar year that includes a day of the taxpayer's taxable year 418
or tax period with respect to which the credit is granted. 419

(c) The taxpayer had a capital investment project reviewed 420
and approved by the tax credit authority as provided in divisions 421
(C), (D), and (E) of this section. 422

(3) "Full-time equivalent employees" means the quotient 423
obtained by dividing the total number of hours for which employees 424
were compensated for employment in the project by two thousand 425
eighty. "Full-time equivalent employees" shall exclude hours that 426
are counted for a credit under section 122.17 of the Revised Code. 427

(4) "Income tax revenue" means the total amount withheld 428
under section 5747.06 of the Revised Code by the taxpayer during 429
the taxable year, or during the calendar year that includes the 430
tax period, from the compensation of all employees employed in the 431
project whose hours of compensation are included in calculating 432
the number of full-time equivalent employees. 433

(5) "Manufacturer" has the same meaning as in section 434
5739.011 of the Revised Code. 435

(6) "Project site" means an integrated complex of facilities 436
in this state, as specified by the tax credit authority under this 437
section, within a fifteen-mile radius where a taxpayer is 438
primarily operating as an eligible business. 439

(7) "Related member" has the same meaning as in section 440
5733.042 of the Revised Code as that section existed on the 441
effective date of its amendment by Am. Sub. H.B. 215 of the 122nd 442
general assembly, September 29, 1997. 443

(8) "Taxable year" includes, in the case of a domestic or 444
foreign insurance company, the calendar year ending on the 445
thirty-first day of December preceding the day the superintendent 446
of insurance is required to certify to the treasurer of state 447
under section 5725.20 or 5729.05 of the Revised Code the amount of 448
taxes due from insurance companies. 449

(9) "Distressed area" has the same meaning as in section 450
122.16 of the Revised Code. 451

(10) "Targeted industry" means the information technology, 452
manufacturing, automobile, or aerospace industry. 453

(B) The tax credit authority created under section 122.17 of 454
the Revised Code may grant tax credits under this section for the 455
purpose of fostering job retention in this state. Upon application 456
by an eligible business and upon consideration of the 457
recommendation of the director of budget and management, tax 458

commissioner, the superintendent of insurance in the case of an 459
insurance company, and director of development services under 460
division (C) of this section, the tax credit authority may grant 461
the following credits against the tax imposed by section 5725.18, 462
5726.02, 5729.03, 5733.06, 5736.02, 5747.02, or 5751.02 of the 463
Revised Code: 464

(1) A nonrefundable credit to an eligible business; 465

(2) A refundable credit to an eligible business meeting the 466
following conditions, provided that the director of budget and 467
management, tax commissioner, superintendent of insurance in the 468
case of an insurance company, and director of development services 469
have recommended the granting of the credit to the tax credit 470
authority before July 1, 2011: 471

(a) The business retains at least one thousand full-time 472
equivalent employees at the project site. 473

(b) The business makes or causes to be made payments for a 474
capital investment project of at least twenty-five million dollars 475
in the aggregate at the project site during a period of three 476
consecutive calendar years, including the calendar year that 477
includes a day of the business' taxable year or tax period with 478
respect to which the credit is granted. 479

(c) In 2010, the business received a written offer of 480
financial incentives from another state of the United States that 481
the director determines to be sufficient inducement for the 482
business to relocate the business' operations from this state to 483
that state. 484

(3) A refundable credit to an eligible business with a total 485
annual payroll of at least twenty million dollars, provided that 486
the tax credit authority grants the tax credit on or after July 1, 487
2011, and before January 1, 2014. 488

The credits authorized in divisions (B)(1), (2), and (3) of 489

this section may be granted for a period up to fifteen taxable 490
years or, in the case of the tax levied by section 5736.02 or 491
5751.02 of the Revised Code, for a period of up to fifteen 492
calendar years. The credit amount for a taxable year or a calendar 493
year that includes the tax period for which a credit may be 494
claimed equals the income tax revenue for that year multiplied by 495
the percentage specified in the agreement with the tax credit 496
authority. The percentage may not exceed seventy-five per cent, 497
except that, if the project site is located in a distressed area 498
or if the taxpayer is engaged at the project site primarily in a 499
targeted industry, the percentage shall equal one hundred per 500
cent. The credit shall be claimed in the order required under 501
section 5725.98, 5726.98, 5729.98, 5733.98, 5747.98, or 5751.98 of 502
the Revised Code. In determining the percentage and term of the 503
credit, the tax credit authority shall consider both the number of 504
full-time equivalent employees and the value of the capital 505
investment project. The credit amount may not be based on the 506
income tax revenue for a calendar year before the calendar year in 507
which the tax credit authority specifies the tax credit is to 508
begin, and the credit shall be claimed only for the taxable years 509
or tax periods specified in the eligible business' agreement with 510
the tax credit authority. In no event shall the credit be claimed 511
for a taxable year or tax period terminating before the date 512
specified in the agreement. Any credit granted under this section 513
against the tax imposed by section 5733.06 or 5747.02 of the 514
Revised Code, to the extent not fully utilized against such tax 515
for taxable years ending prior to 2008, shall automatically be 516
converted without any action taken by the tax credit authority to 517
a credit against the tax levied under Chapter 5751. of the Revised 518
Code for tax periods beginning on or after July 1, 2008, provided 519
that the person to whom the credit was granted is subject to such 520
tax. The converted credit shall apply to those calendar years in 521
which the remaining taxable years specified in the agreement end. 522

If a nonrefundable credit allowed under division (B)(1) of 523
this section for a taxable year or tax period exceeds the 524
taxpayer's tax liability for that year or period, the excess may 525
be carried forward for the three succeeding taxable or calendar 526
years, but the amount of any excess credit allowed in any taxable 527
year or tax period shall be deducted from the balance carried 528
forward to the succeeding year or period. 529

(C) A taxpayer that proposes a capital investment project to 530
retain jobs in this state may apply to the tax credit authority to 531
enter into an agreement for a tax credit under this section. The 532
director of development services shall prescribe the form of the 533
application. After receipt of an application, the authority shall 534
forward copies of the application to the director of budget and 535
management, the tax commissioner, the superintendent of insurance 536
in the case of an insurance company, and the director of 537
development services, each of whom shall review the application to 538
determine the economic impact the proposed project would have on 539
the state and the affected political subdivisions and shall submit 540
a summary of their determinations and recommendations to the 541
authority. 542

(D) Upon review and consideration of the determinations and 543
recommendations described in division (C) of this section, the tax 544
credit authority may enter into an agreement with the taxpayer for 545
a credit under this section if the authority determines all of the 546
following: 547

(1) The taxpayer's capital investment project will result in 548
the retention of employment in this state and will yield a net 549
positive benefit to the state. 550

(2) The taxpayer is economically sound and has the ability to 551
complete the proposed capital investment project. 552

(3) The taxpayer intends to and has the ability to maintain 553

operations at the project site for at least the greater of (a) the 554
term of the credit plus three years, or (b) seven years. 555

(4) Receiving the credit is a major factor in the taxpayer's 556
decision to begin, continue with, or complete the project. 557

(5) If the taxpayer is applying to enter into an agreement 558
for a tax credit authorized under division (B)(3) of this section, 559
the taxpayer's capital investment project will be located in the 560
political subdivision in which the taxpayer maintains its 561
principal place of business or maintains a unit or division with 562
at least four thousand two hundred employees at the project site. 563

(E) An agreement under this section shall include all of the 564
following: 565

(1) A detailed description of the project that is the subject 566
of the agreement, including the amount of the investment, the 567
period over which the investment has been or is being made, the 568
number of full-time equivalent employees at the project site, and 569
the anticipated income tax revenue to be generated. 570

(2) The term of the credit, the percentage of the tax credit, 571
the maximum annual value of tax credits that may be allowed each 572
year, and the first year for which the credit may be claimed. 573

(3) A requirement that the taxpayer maintain operations at 574
the project site for at least the greater of (a) the term of the 575
credit plus three years, or (b) seven years. 576

(4)(a) In the case of a credit granted under division (B)(1) 577
of this section, a requirement that the taxpayer retain at least 578
~~five hundred~~ the number of full-time equivalent employees required 579
to be retained under division (A)(2)(a) of this section at the 580
project site and within this state for the entire term of the 581
credit, or a requirement that the taxpayer maintain an annual 582
payroll of at least ~~thirty-five million dollars~~ the amount 583
required under division (A)(2)(a) of this section for the entire 584

term of the credit; 585

(b) In the case of a credit granted under division (B)(2) of 586
this section, a requirement that the taxpayer retain at least one 587
thousand full-time equivalent employees at the project site and 588
within this state for the entire term of the credit; 589

(c) In the case of a credit granted under division (B)(3) of 590
this section, either of the following: 591

(i) A requirement that the taxpayer retain at least five 592
hundred full-time equivalent employees at the project site and 593
within this state for the entire term of the credit and a 594
requirement that the taxpayer maintain an annual payroll of at 595
least twenty million dollars for the entire term of the credit; 596

(ii) A requirement that the taxpayer maintain an annual 597
payroll of at least thirty-five million dollars for the entire 598
term of the credit. 599

~~(5) A requirement that the taxpayer annually report to the 600
director of development services employment, tax withholding, 601
capital investment, and other information the director needs to 602
perform the director's duties under this section. 603~~

~~(6) A requirement that the director of development services 604
annually review the annual reports of the taxpayer to verify the 605
information reported under division (E)(5) of this section and 606
compliance with the agreement. Upon verification, the director 607
shall issue a certificate to the taxpayer stating that the 608
information has been verified whether the taxpayer is in 609
compliance with the agreement and identifying the amount of the 610
credit for the taxable year or calendar year that includes the tax 611
period. In determining the number of full-time equivalent 612
employees, no position shall be counted that is filled by an 613
employee who is included in the calculation of a tax credit under 614
section 122.17 of the Revised Code. 615~~

~~(7)~~(6) A provision providing that the taxpayer may not 616
relocate a substantial number of employment positions from 617
elsewhere in this state to the project site unless the director of 618
development services determines that the taxpayer notified the 619
legislative authority of the county, township, or municipal 620
corporation from which the employment positions would be 621
relocated. 622

For purposes of this section, the movement of an employment 623
position from one political subdivision to another political 624
subdivision shall be considered a relocation of an employment 625
position unless the movement is confined to the project site. The 626
transfer of an employment position from one political subdivision 627
to another political subdivision shall not be considered a 628
relocation of an employment position if the employment position in 629
the first political subdivision is replaced by another employment 630
position. 631

~~(8)~~(7) A waiver by the taxpayer of any limitations periods 632
relating to assessments or adjustments resulting from the 633
taxpayer's failure to comply with the agreement. 634

(F) If a taxpayer fails to meet or comply with any condition 635
or requirement set forth in a tax credit agreement, the tax credit 636
authority may amend the agreement to reduce the percentage or term 637
of the credit. The reduction of the percentage or term may take 638
effect in the current taxable or calendar year. 639

(G) Financial statements and other information submitted to 640
the department of development services or the tax credit authority 641
by an applicant for or recipient of a tax credit under this 642
section, and any information taken for any purpose from such 643
statements or information, are not public records subject to 644
section 149.43 of the Revised Code. However, the chairperson of 645
the authority may make use of the statements and other information 646
for purposes of issuing public reports or in connection with court 647

proceedings concerning tax credit agreements under this section. 648
Upon the request of the tax commissioner, or the superintendent of 649
insurance in the case of an insurance company, the chairperson of 650
the authority shall provide to the commissioner or superintendent 651
any statement or other information submitted by an applicant for 652
or recipient of a tax credit in connection with the credit. The 653
commissioner or superintendent shall preserve the confidentiality 654
of the statement or other information. 655

(H) A taxpayer claiming a tax credit under this section shall 656
submit to the tax commissioner or, in the case of an insurance 657
company, to the superintendent of insurance, a copy of the 658
director of development services' certificate of verification 659
under division (E)~~(6)~~(5) of this section with the taxpayer's tax 660
report or return for the taxable year or for the calendar year 661
that includes the tax period. Failure to submit a copy of the 662
certificate with the report or return does not invalidate a claim 663
for a credit if the taxpayer submits a copy of the certificate to 664
the commissioner or superintendent within sixty days after the 665
commissioner or superintendent requests it. 666

(I) For the purposes of this section, a taxpayer may include 667
a partnership, a corporation that has made an election under 668
subchapter S of chapter one of subtitle A of the Internal Revenue 669
Code, or any other business entity through which income flows as a 670
distributive share to its owners. A partnership, S-corporation, or 671
other such business entity may elect to pass the credit received 672
under this section through to the persons to whom the income or 673
profit of the partnership, S-corporation, or other entity is 674
distributed. ~~The election shall be made on the annual report~~ 675
~~required under division (E)(5) of this section. The taxpayer shall~~ 676
make the election by annually submitting a notice to the director 677
of development services. The notice may be included in an annual 678
report submitted under division (O) of this section. The election 679

applies to and is irrevocable for the credit for which the report 680
is submitted. If the election is made, the credit shall be 681
apportioned among those persons in the same proportions as those 682
in which the income or profit is distributed. 683

(J) If the director of development services determines that a 684
taxpayer that received a certificate under division (E)~~(6)~~(5) of 685
this section is not complying with the requirement under division 686
(E)(3) of this section, the director shall notify the tax credit 687
authority of the noncompliance. After receiving such a notice, and 688
after giving the taxpayer an opportunity to explain the 689
noncompliance, the authority may terminate the agreement and 690
require the taxpayer, or any related member or members that 691
claimed the tax credit under division (N) of this section, to 692
refund to the state all or a portion of the credit claimed in 693
previous years, as follows: 694

(1) If the taxpayer maintained operations at the project site 695
for less than or equal to the term of the credit, an amount not to 696
exceed one hundred per cent of the sum of any tax credits allowed 697
and received under this section. 698

(2) If the taxpayer maintained operations at the project site 699
longer than the term of the credit, but less than the greater of 700
(a) the term of the credit plus three years, or (b) seven years, 701
the amount required to be refunded shall not exceed seventy-five 702
per cent of the sum of any tax credits allowed and received under 703
this section. 704

In determining the portion of the credit to be refunded to 705
this state, the authority shall consider the effect of market 706
conditions on the taxpayer's project and whether the taxpayer 707
continues to maintain other operations in this state. After making 708
the determination, the authority shall certify the amount to be 709
refunded to the tax commissioner or the superintendent of 710
insurance. If the taxpayer, or any related member or members who 711

claimed the tax credit under division (N) of this section, is not 712
an insurance company, the commissioner shall make an assessment 713
for that amount against the taxpayer under Chapter 5726., 5733., 714
5736., 5747., or 5751. of the Revised Code. If the taxpayer, or 715
any related member or members that claimed the tax credit under 716
division (N) of this section, is an insurance company, the 717
superintendent of insurance shall make an assessment under section 718
5725.222 or 5729.102 of the Revised Code. The time limitations on 719
assessments under those chapters and sections do not apply to an 720
assessment under this division, but the commissioner or 721
superintendent shall make the assessment within one year after the 722
date the authority certifies to the commissioner or superintendent 723
the amount to be refunded. 724

(K) The director of development services, after consultation 725
with the tax commissioner and the superintendent of insurance and 726
in accordance with Chapter 119. of the Revised Code, shall adopt 727
rules necessary to implement this section. The rules may provide 728
for recipients of tax credits under this section to be charged 729
fees to cover administrative costs of the tax credit program. The 730
fees collected shall be credited to the business assistance fund 731
created in section 122.174 of the Revised Code. At the time the 732
director gives public notice under division (A) of section 119.03 733
of the Revised Code of the adoption of the rules, the director 734
shall submit copies of the proposed rules to the chairpersons of 735
the standing committees on economic development in the senate and 736
the house of representatives. 737

(L) On or before the first day of August of each year, the 738
director of development services shall submit a report to the 739
governor, the president of the senate, and the speaker of the 740
house of representatives on the tax credit program under this 741
section. The report shall include information on the number of 742
agreements that were entered into under this section during the 743

preceding calendar year, a description of the project that is the 744
subject of each such agreement, and an update on the status of 745
projects under agreements entered into before the preceding 746
calendar year. 747

(M)(1) The aggregate amount of tax credits issued under 748
division (B)(1) of this section during any calendar year for 749
capital investment projects reviewed and approved by the tax 750
credit authority may not exceed the following amounts: 751

(a) For 2010, thirteen million dollars; 752

(b) For 2011 through 2023, the amount of the limit for the 753
preceding calendar year plus thirteen million dollars; 754

(c) For 2024 and each year thereafter, one hundred 755
ninety-five million dollars. 756

(2) The aggregate amount of tax credits authorized under 757
divisions (B)(2) and (3) of this section and allowed to be claimed 758
by taxpayers in any calendar year for capital improvement projects 759
reviewed and approved by the tax credit authority in 2011, 2012, 760
and 2013 combined shall not exceed twenty-five million dollars. An 761
amount equal to the aggregate amount of credits first authorized 762
in calendar year 2011, 2012, and 2013 may be claimed over the 763
ensuing period up to fifteen years, subject to the terms of 764
individual tax credit agreements. 765

The limitations in division (M) of this section do not apply 766
to credits for capital investment projects approved by the tax 767
credit authority before July 1, 2009. 768

(N) This division applies only to an eligible business that 769
is part of an affiliated group that includes a diversified savings 770
and loan holding company or a grandfathered unitary savings and 771
loan holding company, as those terms are defined in section 772
5726.01 of the Revised Code. Notwithstanding any contrary 773
provision of the agreement between such an eligible business and 774

the tax credit authority, any credit granted under this section 775
against the tax imposed by section 5725.18, 5729.03, 5733.06, 776
5747.02, or 5751.02 of the Revised Code to the eligible business, 777
at the election of the eligible business and without any action by 778
the tax credit authority, may be shared with any member or members 779
of the affiliated group that includes the eligible business, which 780
member or members may claim the credit against the taxes imposed 781
by section 5725.18, 5726.02, 5729.03, 5733.06, 5747.02, or 5751.02 782
of the Revised Code. Credits shall be claimed by the eligible 783
business in sequential order, as applicable, first claiming the 784
credits to the fullest extent possible against the tax that the 785
certificate holder is subject to, then against the tax imposed by, 786
sequentially, section 5729.03, 5725.18, 5747.02, 5751.02, and 787
lastly 5726.02 of the Revised Code. The credits may be allocated 788
among the members of the affiliated group in such manner as the 789
eligible business elects, but subject to the sequential order 790
required under this division. This division applies to credits 791
granted before, on, or after March 27, 2013, the effective date of 792
H.B. 510 of the 129th general assembly. Credits granted before 793
that effective date that are shared and allocated under this 794
division may be claimed in those calendar years in which the 795
remaining taxable years specified in the agreement end. 796

As used in this division, "affiliated group" means a group of 797
two or more persons with fifty per cent or greater of the value of 798
each person's ownership interests owned or controlled directly, 799
indirectly, or constructively through related interests by common 800
owners during all or any portion of the taxable year, and the 801
common owners. "Affiliated group" includes, but is not limited to, 802
any person eligible to be included in a consolidated elected 803
taxpayer group under section 5751.011 of the Revised Code or a 804
combined taxpayer group under section 5751.012 of the Revised 805
Code. 806

(O) The director of development services may require a 807
taxpayer subject to an agreement entered into under this section 808
to report annually to the director employment, tax withholding, 809
capital investment, and other information the director needs to 810
perform the director's duties under this section. 811

Section 2. That existing sections 122.17 and 122.171 of the 812
Revised Code are hereby repealed. 813