

As Introduced

133rd General Assembly

Regular Session

2019-2020

S. B. No. 153

Senator Dolan

Cosponsors: Senators Hackett, Antonio, Williams, Coley

A BILL

To amend section 122.171 of the Revised Code to 1
permit manufacturers to meet alternative minimum 2
employment and investment requirements to 3
qualify for the Job Retention Tax Credit. 4

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

Section 1. That section 122.171 of the Revised Code be 5
amended to read as follows: 6

Sec. 122.171. (A) As used in this section: 7

(1) "Capital investment project" means a plan of 8
investment at a project site for the acquisition, construction, 9
renovation, or repair of buildings, machinery, or equipment, or 10
for capitalized costs of basic research and new product 11
development determined in accordance with generally accepted 12
accounting principles, but does not include any of the 13
following: 14

(a) Payments made for the acquisition of personal property 15
through operating leases; 16

(b) Project costs paid before January 1, 2002; 17

(c) Payments made to a related member as defined in 18
section 5733.042 of the Revised Code or to a consolidated 19
elected taxpayer or a combined taxpayer as defined in section 20
5751.01 of the Revised Code. 21

(2) "Eligible business" means a taxpayer and its related 22
members with Ohio operations ~~satisfying all of the following~~ 23
that had a capital investment project reviewed and approved by 24
the tax credit authority as provided in divisions (C), (D), and 25
(E) of this section and that satisfies either of the following 26
requirements: 27

(a) ~~The~~ If engaged at the project site primarily in 28
significant corporate administrative functions, as defined by 29
the director of development services by rule, the taxpayer meets 30
both of the following criteria: 31

(i) The taxpayer either is located in a foreign trade 32
zone, employs at least five hundred full-time equivalent 33
employees, or has an annual Ohio employee payroll of at least 34
thirty-five million dollars at the time the tax credit authority 35
grants the tax credit under this section; 36

~~(b)~~ (ii) The taxpayer makes or causes to be made payments 37
for the capital investment project of ~~one of the following:~~ 38

~~(i) If the taxpayer is engaged at the project site~~ 39
~~primarily as a manufacturer, at least fifty million dollars in~~ 40
~~the aggregate at the project site during a period of three~~ 41
~~consecutive calendar years, including the calendar year that~~ 42
~~includes a day of the taxpayer's taxable year or tax period with~~ 43
~~respect to which the credit is granted;~~ 44

~~(ii) If the taxpayer is engaged at the project site~~ 45
~~primarily in significant corporate administrative functions, as~~ 46

~~defined by the director of development services by rule, at~~ 47
least twenty million dollars in the aggregate at the project 48
site during a period of three consecutive calendar years 49
including the calendar year that includes a day of the 50
taxpayer's taxable year or tax period with respect to which the 51
credit is granted. 52

~~(c) The taxpayer had a capital investment project reviewed~~ 53
~~and approved by the tax credit authority as provided in~~ 54
~~divisions (C), (D), and (E) of this section.~~ 55

(b) If engaged at the project site primarily as a 56
manufacturer, the taxpayer makes or causes to be made payments 57
for the capital investment project at the project site during a 58
period of three consecutive calendar years, including the 59
calendar year that includes a day of the taxpayer's taxable year 60
or tax period with respect to which the credit is granted, in an 61
amount that in the aggregate equals or exceeds the lesser of the 62
following: 63

(i) Fifty million dollars; 64

(ii) Five per cent of the net book value of all tangible 65
personal property used at the project site as of the last day of 66
the three-year period in which the capital investment payments 67
are made. 68

(3) "Full-time equivalent employees" means the quotient 69
obtained by dividing the total number of hours for which 70
employees were compensated for employment in the project by two 71
thousand eighty. "Full-time equivalent employees" shall exclude 72
hours that are counted for a credit under section 122.17 of the 73
Revised Code. 74

(4) "Ohio employee payroll" has the same meaning as in 75

section 122.17 of the Revised Code.	76
(5) "Manufacturer" has the same meaning as in section 5739.011 of the Revised Code.	77 78
(6) "Project site" means an integrated complex of facilities in this state, as specified by the tax credit authority under this section, within a fifteen-mile radius where a taxpayer is primarily operating as an eligible business.	79 80 81 82
(7) "Related member" has the same meaning as in section 5733.042 of the Revised Code as that section existed on the effective date of its amendment by Am. Sub. H.B. 215 of the 122nd general assembly, September 29, 1997.	83 84 85 86
(8) "Taxable year" includes, in the case of a domestic or foreign insurance company, the calendar year ending on the thirty-first day of December preceding the day the superintendent of insurance is required to certify to the treasurer of state under section 5725.20 or 5729.05 of the Revised Code the amount of taxes due from insurance companies.	87 88 89 90 91 92
<u>(9) "Foreign trade zone" means a general purpose foreign trade zone or a special purpose subzone for which, pursuant to 19 U.S.C. 81a, as amended, a permit for foreign trade zone status has been granted and remains active, including special purpose subzones for which a permit has been granted and remains active.</u>	93 94 95 96 97 98
(B) The tax credit authority created under section 122.17 of the Revised Code may grant a nonrefundable tax credit to an eligible business under this section for the purpose of fostering job retention in this state. Upon application by an eligible business and upon consideration of the determination of the director of budget and management, tax commissioner, and the	99 100 101 102 103 104

superintendent of insurance in the case of an insurance company, 105
and the recommendation and determination of the director of 106
development services under division (C) of this section, the tax 107
credit authority may grant the credit against the tax imposed by 108
section 5725.18, 5726.02, 5729.03, 5733.06, 5736.02, 5747.02, or 109
5751.02 of the Revised Code. 110

The credit authorized in this section may be granted for a 111
period up to fifteen taxable years or, in the case of the tax 112
levied by section 5736.02 or 5751.02 of the Revised Code, for a 113
period of up to fifteen calendar years. The credit amount for a 114
taxable year or a calendar year that includes the tax period for 115
which a credit may be claimed equals the Ohio employee payroll 116
for that year multiplied by the percentage specified in the 117
agreement with the tax credit authority. The credit shall be 118
claimed in the order required under section 5725.98, 5726.98, 119
5729.98, 5733.98, 5747.98, or 5751.98 of the Revised Code. In 120
determining the percentage and term of the credit, the tax 121
credit authority shall consider both the number of full-time 122
equivalent employees and the value of the capital investment 123
project. The credit amount may not be based on the Ohio employee 124
payroll for a calendar year before the calendar year in which 125
the tax credit authority specifies the tax credit is to begin, 126
and the credit shall be claimed only for the taxable years or 127
tax periods specified in the eligible business' agreement with 128
the tax credit authority. In no event shall the credit be 129
claimed for a taxable year or tax period terminating before the 130
date specified in the agreement. 131

If a credit allowed under this section for a taxable year 132
or tax period exceeds the taxpayer's tax liability for that year 133
or period, the excess may be carried forward for the three 134
succeeding taxable or calendar years, but the amount of any 135

excess credit allowed in any taxable year or tax period shall be 136
deducted from the balance carried forward to the succeeding year 137
or period. 138

(C) A taxpayer that proposes a capital investment project 139
to retain jobs in this state may apply to the tax credit 140
authority to enter into an agreement for a tax credit under this 141
section. The director of development services shall prescribe 142
the form of the application. After receipt of an application, 143
the authority shall forward copies of the application to the 144
director of budget and management, the tax commissioner, and the 145
superintendent of insurance in the case of an insurance company, 146
each of whom shall review the application to determine the 147
economic impact the proposed project would have on the state and 148
the affected political subdivisions and shall submit a summary 149
of their determinations to the authority. The authority shall 150
also forward a copy of the application to the director of 151
development services, who shall review the application to 152
determine the economic impact the proposed project would have on 153
the state and the affected political subdivisions and shall 154
submit a summary of the director's determinations and 155
recommendations to the authority. 156

(D) Upon review and consideration of the determinations 157
and recommendations described in division (C) of this section, 158
the tax credit authority may enter into an agreement with the 159
taxpayer for a credit under this section if the authority 160
determines all of the following: 161

(1) The taxpayer's capital investment project will result 162
in the retention of employment in this state. 163

(2) The taxpayer is economically sound and has the ability 164
to complete the proposed capital investment project. 165

(3) The taxpayer intends to and has the ability to 166
maintain operations at the project site for at least the greater 167
of (a) the term of the credit plus three years, or (b) seven 168
years. 169

(4) Receiving the credit is a major factor in the 170
taxpayer's decision to begin, continue with, or complete the 171
project. 172

(E) An agreement under this section shall include all of 173
the following: 174

(1) A detailed description of the project that is the 175
subject of the agreement, including the amount of the 176
investment, the period over which the investment has been or is 177
being made, the number of full-time equivalent employees at the 178
project site, and the anticipated Ohio employee payroll to be 179
generated. 180

(2) The term of the credit, the percentage of the tax 181
credit, the maximum annual value of tax credits that may be 182
allowed each year, and the first year for which the credit may 183
be claimed. 184

(3) A requirement that the taxpayer maintain operations at 185
the project site for at least the greater of (a) the term of the 186
credit plus three years, or (b) seven years. 187

(4) ~~A~~ (a) If the taxpayer is engaged at the project site 188
primarily in significant corporate administrative functions, a 189
requirement that the taxpayer either retain at least five 190
hundred full-time equivalent employees at the project site and 191
within this state for the entire term of the credit, ~~or a~~ 192
~~requirement that the taxpayer~~ maintain an annual Ohio employee 193
payroll of at least thirty-five million dollars for the entire 194

term of the credit, or remain located in a foreign trade zone 195
for the entire term of the credit; 196

(b) If the taxpayer is engaged at the project site 197
primarily as a manufacturer, a requirement that the taxpayer 198
maintain at least the number of full-time equivalent employees 199
specified in the agreement pursuant to division (E)(1) of this 200
section at the project site and within this state for the entire 201
term of the credit. 202

(5) A requirement that the taxpayer annually report to the 203
director of development services full-time equivalent employees, 204
Ohio employee payroll, capital investment, and other information 205
the director needs to perform the director's duties under this 206
section. 207

(6) A requirement that the director of development 208
services annually review the annual reports of the taxpayer to 209
verify the information reported under division (E)(5) of this 210
section and compliance with the agreement. Upon verification, 211
the director shall issue a certificate to the taxpayer stating 212
that the information has been verified and identifying the 213
amount of the credit for the taxable year or calendar year that 214
includes the tax period. In determining the number of full-time 215
equivalent employees, no position shall be counted that is 216
filled by an employee who is included in the calculation of a 217
tax credit under section 122.17 of the Revised Code. 218

(7) A provision providing that the taxpayer may not 219
relocate a substantial number of employment positions from 220
elsewhere in this state to the project site unless the director 221
of development services determines that the taxpayer notified 222
the legislative authority of the county, township, or municipal 223
corporation from which the employment positions would be 224

relocated. 225

For purposes of this section, the movement of an 226
employment position from one political subdivision to another 227
political subdivision shall be considered a relocation of an 228
employment position unless the movement is confined to the 229
project site. The transfer of an employment position from one 230
political subdivision to another political subdivision shall not 231
be considered a relocation of an employment position if the 232
employment position in the first political subdivision is 233
replaced by another employment position. 234

(8) A waiver by the taxpayer of any limitations periods 235
relating to assessments or adjustments resulting from the 236
taxpayer's failure to comply with the agreement. 237

(F) If a taxpayer fails to meet or comply with any 238
condition or requirement set forth in a tax credit agreement, 239
the tax credit authority may amend the agreement to reduce the 240
percentage or term of the credit. The reduction of the 241
percentage or term may take effect in the current taxable or 242
calendar year. 243

(G) Financial statements and other information submitted 244
to the department of development services or the tax credit 245
authority by an applicant for or recipient of a tax credit under 246
this section, and any information taken for any purpose from 247
such statements or information, are not public records subject 248
to section 149.43 of the Revised Code. However, the chairperson 249
of the authority may make use of the statements and other 250
information for purposes of issuing public reports or in 251
connection with court proceedings concerning tax credit 252
agreements under this section. Upon the request of the tax 253
commissioner, or the superintendent of insurance in the case of 254

an insurance company, the chairperson of the authority shall 255
provide to the commissioner or superintendent any statement or 256
other information submitted by an applicant for or recipient of 257
a tax credit in connection with the credit. The commissioner or 258
superintendent shall preserve the confidentiality of the 259
statement or other information. 260

(H) A taxpayer claiming a tax credit under this section 261
shall submit to the tax commissioner or, in the case of an 262
insurance company, to the superintendent of insurance, a copy of 263
the director of development services' certificate of 264
verification under division (E) (6) of this section with the 265
taxpayer's tax report or return for the taxable year or for the 266
calendar year that includes the tax period. Failure to submit a 267
copy of the certificate with the report or return does not 268
invalidate a claim for a credit if the taxpayer submits a copy 269
of the certificate to the commissioner or superintendent within 270
the time prescribed by section 5703.0510 of the Revised Code or 271
within thirty days after the commissioner or superintendent 272
requests it. 273

(I) For the purposes of this section, a taxpayer may 274
include a partnership, a corporation that has made an election 275
under subchapter S of chapter one of subtitle A of the Internal 276
Revenue Code, or any other business entity through which income 277
flows as a distributive share to its owners. A partnership, S- 278
corporation, or other such business entity may elect to pass the 279
credit received under this section through to the persons to 280
whom the income or profit of the partnership, S-corporation, or 281
other entity is distributed. The election shall be made on the 282
annual report required under division (E) (5) of this section. 283
The election applies to and is irrevocable for the credit for 284
which the report is submitted. If the election is made, the 285

credit shall be apportioned among those persons in the same 286
proportions as those in which the income or profit is 287
distributed. 288

(J) (1) If the director of development services determines 289
that a taxpayer that received a certificate under division (E) 290
(6) of this section is not complying with the requirements of 291
the agreement, the director shall notify the tax credit 292
authority of the noncompliance. After receiving such a notice, 293
and after giving the taxpayer an opportunity to explain the 294
noncompliance, the authority may terminate the agreement and 295
require the taxpayer, or any related member or members that 296
claimed the tax credit under division (N) of this section, to 297
refund to the state all or a portion of the credit claimed in 298
previous years, as follows: 299

(a) If the taxpayer fails to comply with the requirement 300
under division (E) (3) of this section, an amount determined in 301
accordance with the following: 302

(i) If the taxpayer maintained operations at the project 303
site for less than or equal to the term of the credit, an amount 304
not to exceed one hundred per cent of the sum of any tax credits 305
allowed and received under this section. 306

(ii) If the taxpayer maintained operations at the project 307
site longer than the term of the credit, but less than the 308
greater of seven years or the term of the credit plus three 309
years, the amount required to be refunded shall not exceed 310
seventy-five per cent of the sum of any tax credits allowed and 311
received under this section. 312

(b) If the taxpayer fails to substantially ~~maintain both~~ 313
~~the number of full-time equivalent employees and the amount of~~ 314

~~Ohio employee payroll, satisfy the employment, payroll, or~~ 315
~~location requirements required under the agreement, as~~ 316
~~prescribed under division (E)(4)(a) or (b), as applicable to the~~ 317
~~taxpayer,~~ at any time during the term of the agreement or during 318
the post-term reporting period, an amount determined at the 319
discretion of the authority. 320

(2) If a taxpayer files for bankruptcy and fails as 321
described in division (J)(1)(a) or (b) of this section, the 322
director may immediately commence an action to recoup an amount 323
not exceeding one hundred per cent of the sum of any credits 324
received by the taxpayer under this section. 325

(3) In determining the portion of the credit to be 326
refunded to this state, the authority shall consider the effect 327
of market conditions on the taxpayer's project and whether the 328
taxpayer continues to maintain other operations in this state. 329
After making the determination, the authority shall certify the 330
amount to be refunded to the tax commissioner or the 331
superintendent of insurance. If the taxpayer, or any related 332
member or members who claimed the tax credit under division (N) 333
of this section, is not an insurance company, the commissioner 334
shall make an assessment for that amount against the taxpayer 335
under Chapter 5726., 5733., 5736., 5747., or 5751. of the 336
Revised Code. If the taxpayer, or any related member or members 337
that claimed the tax credit under division (N) of this section, 338
is an insurance company, the superintendent of insurance shall 339
make an assessment under section 5725.222 or 5729.102 of the 340
Revised Code. The time limitations on assessments under those 341
chapters and sections do not apply to an assessment under this 342
division, but the commissioner or superintendent shall make the 343
assessment within one year after the date the authority 344
certifies to the commissioner or superintendent the amount to be 345

refunded. 346

(K) The director of development services, after 347
consultation with the tax commissioner and the superintendent of 348
insurance and in accordance with Chapter 119. of the Revised 349
Code, shall adopt rules necessary to implement this section. The 350
rules may provide for recipients of tax credits under this 351
section to be charged fees to cover administrative costs of the 352
tax credit program. The fees collected shall be credited to the 353
tax incentives operating fund created in section 122.174 of the 354
Revised Code. At the time the director gives public notice under 355
division (A) of section 119.03 of the Revised Code of the 356
adoption of the rules, the director shall submit copies of the 357
proposed rules to the chairpersons of the standing committees on 358
economic development in the senate and the house of 359
representatives. 360

(L) On or before the first day of August of each year, the 361
director of development services shall submit a report to the 362
governor, the president of the senate, and the speaker of the 363
house of representatives on the tax credit program under this 364
section. The report shall include information on the number of 365
agreements that were entered into under this section during the 366
preceding calendar year, a description of the project that is 367
the subject of each such agreement, and an update on the status 368
of projects under agreements entered into before the preceding 369
calendar year. 370

(M) The aggregate amount of nonrefundable tax credits 371
issued under this section during any calendar year for capital 372
investment projects reviewed and approved by the tax credit 373
authority may not exceed the following amounts: 374

(1) For 2010, thirteen million dollars; 375

(2) For 2011 through 2023, the amount of the limit for the 376
preceding calendar year plus thirteen million dollars; 377

(3) For 2024 and each year thereafter, one hundred ninety- 378
five million dollars. 379

The limitations in division (M) of this section do not 380
apply to credits for capital investment projects approved by the 381
tax credit authority before July 1, 2009. 382

(N) This division applies only to an eligible business 383
that is part of an affiliated group that includes a diversified 384
savings and loan holding company or a grandfathered unitary 385
savings and loan holding company, as those terms are defined in 386
section 5726.01 of the Revised Code. Notwithstanding any 387
contrary provision of the agreement between such an eligible 388
business and the tax credit authority, any credit granted under 389
this section against the tax imposed by section 5725.18, 390
5729.03, 5733.06, 5747.02, or 5751.02 of the Revised Code to the 391
eligible business, at the election of the eligible business and 392
without any action by the tax credit authority, may be shared 393
with any member or members of the affiliated group that includes 394
the eligible business, which member or members may claim the 395
credit against the taxes imposed by section 5725.18, 5726.02, 396
5729.03, 5733.06, 5747.02, or 5751.02 of the Revised Code. 397
Credits shall be claimed by the eligible business in sequential 398
order, as applicable, first claiming the credits to the fullest 399
extent possible against the tax that the certificate holder is 400
subject to, then against the tax imposed by, sequentially, 401
section 5729.03, 5725.18, 5747.02, 5751.02, and lastly 5726.02 402
of the Revised Code. The credits may be allocated among the 403
members of the affiliated group in such manner as the eligible 404
business elects, but subject to the sequential order required 405

under this division. This division applies to credits granted 406
before, on, or after March 27, 2013, the effective date of H.B. 407
510 of the 129th general assembly. Credits granted before that 408
effective date that are shared and allocated under this division 409
may be claimed in those calendar years in which the remaining 410
taxable years specified in the agreement end. 411

As used in this division, "affiliated group" means a group 412
of two or more persons with fifty per cent or greater of the 413
value of each person's ownership interests owned or controlled 414
directly, indirectly, or constructively through related 415
interests by common owners during all or any portion of the 416
taxable year, and the common owners. "Affiliated group" 417
includes, but is not limited to, any person eligible to be 418
included in a consolidated elected taxpayer group under section 419
5751.011 of the Revised Code or a combined taxpayer group under 420
section 5751.012 of the Revised Code. 421

(O) (1) As used in division (O) of this section: 422

(a) "Eligible agreement" means an agreement approved by 423
the tax credit authority under this section on or before 424
December 31, 2013. 425

(b) "Reporting period" means a period corresponding to the 426
annual report required under division (E) (5) of this section. 427

(c) "Income tax revenue" has the same meaning as under 428
division (S) of section 122.17 of the Revised Code. 429

(2) In calendar year 2016 and thereafter, the tax credit 430
authority shall annually determine a withholding adjustment 431
factor to be used in the computation of income tax revenue for 432
eligible agreements. The withholding adjustment factor shall be 433
a numerical percentage that equals the percentage that employer 434

income tax withholding rates have been increased or decreased as 435
a result of changes in the income tax rates prescribed by 436
section 5747.02 of the Revised Code by amendment of that section 437
taking effect on or after June 29, 2013. 438

(3) Except as provided in division (O) (4) of this section, 439
for reporting periods ending in 2015 and thereafter for 440
taxpayers subject to eligible agreements, the tax credit 441
authority shall adjust the income tax revenue reported on the 442
taxpayer's annual report by multiplying the withholding 443
adjustment factor by the taxpayer's income tax revenue and doing 444
one of the following: 445

(a) If the income tax rates prescribed by section 5747.02 446
of the Revised Code have decreased by amendment of this section 447
taking effect on or after June 29, 2013, add the product to the 448
taxpayer's income tax revenue. 449

(b) If the income tax rates prescribed by section 5747.02 450
of the Revised Code have increased by amendment of this section 451
taking effect on or after June 29, 2013, subtract the product 452
from the taxpayer's income tax revenue. 453

(4) Division (O) (3) of this section shall not apply unless 454
all of the following apply with respect to the eligible 455
agreement: 456

(a) ~~The~~ If applicable, the taxpayer has achieved one 457
hundred per cent of the job retention commitment identified in 458
the agreement. 459

(b) If applicable, the taxpayer has achieved one hundred 460
per cent of the payroll retention commitment identified in the 461
agreement. 462

(c) If applicable, the taxpayer has achieved one hundred 463

per cent of the investment commitment identified in the 464
agreement. 465

(5) Failure by a taxpayer to have achieved any of the 466
applicable commitments described in divisions (O) (4) (a) to (c) 467
of this section in a reporting period does not disqualify the 468
taxpayer for the adjustment under division (O) of this section 469
for an ensuing reporting period. 470

Section 2. That existing section 122.171 of the Revised 471
Code is hereby repealed. 472