

# AN ACT

To amend sections 122.15, 122.151, 122.152, 122.154, 122.171, 166.01, 166.02, 166.08, 166.11, 166.13, 166.14, 166.16, 5733.98, and 5747.98 and to enact sections 166.17 to 166.21, 184.04, 5733.352, and 5747.331 of the Revised Code and to amend Sections 41 and 41.15 of Am. Sub. H.B. 94 of the 124th General Assembly, as subsequently amended, to increase the dollar amount that may be invested in technology and revise the eligibility requirements for, and increase the maximum amount of, technology investment tax credits that may be issued; to create the Ohio Research Commercialization Grant Program; to increase the maximum amount of obligations that may be issued to fund economic development programs; to move the Innovation Ohio Loan Fund into the State Treasury; to create the Research and Development Loan Fund, and authorize the Director to make loans from that Fund and issue obligations for research and development projects; to grant tax credits for qualified research and development loan payments; to extend the maximum term of, and to change the job retention requirements for, the job retention tax credit; to grant a tax credit to corporations operating call centers to offset future changes in the corporation franchise tax law; and to make an appropriation.

*Be it enacted by the General Assembly of the State of Ohio:*

SECTION 1. That sections 122.15, 122.151, 122.152, 122.154, 122.171, 166.01, 166.02, 166.08, 166.11, 166.13, 166.14, 166.16, 5733.98, and

5747.98 be amended and sections 166.17, 166.18, 166.19, 166.20, 166.21, 184.04, 5733.352, and 5747.331 of the Revised Code be enacted to read as follows:

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

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

(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 for a tax credit under this section. The Edison center 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, within three weeks after receiving the application, shall review it, determine whether the investor should be recommended for the tax credit, and send written notice of its initial determination to the industrial technology and enterprise advisory council and to the investor. If the center determines the investor should not be recommended for the tax credit, it 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 ~~one~~ 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 ~~one~~ 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 ~~one three hundred fifty~~ 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 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, within three 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 and to the contact person. The center shall not recommend that a group of investors receive a tax credit unless each investor is eligible under those conditions. The center 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 determines the group should not be recommended for the tax credit, it 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 receives a notice of recommendation from an Edison center, the committee 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 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 shall send written notice of approval or disapproval of the tax credit to the investor or group contact person, the director of development, and the Edison center. If the committee disapproves the tax credit, it shall include in the notice the reasons for the disapproval.

(D)(1) The industrial technology and enterprise advisory council committee 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 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 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 ~~ten~~ twenty 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 ~~money in an Ohio entity of less than one~~ 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 ~~one~~ 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 shall approve or disapprove tax credit applications under this section in the order in which they are received by the council.

(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, may adopt, amend, and rescind rules necessary to implement sections 122.15 to 122.154 of the Revised Code.

(H) An Edison center 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 under section 122.151 of the Revised Code, an investor, within a period of time determined by the committee, may make the investment and apply to the council for a tax credit certificate. If the ~~council~~ committee 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 and the director of development indicating that the investor is allowed a tax credit ~~in an amount equal to twenty-five per cent of the investment~~ 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 industrial technology and enterprise advisory council~~ director of development shall develop the form of the tax credit certificate and ~~the industrial technology and enterprise advisory council committee~~ shall use that form when issuing a tax credit certificate under this section.

(2) ~~The industrial technology and enterprise advisory council~~ 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 committee.

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

(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.

Sec. 122.154. (A) A business may apply to an Edison center 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 shall prescribe any other information the business must submit with the application and the form of the application. The center, within three 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 and the business of its initial determination. If the center 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.

Within four weeks after the council receives a notice of recommendation from an Edison center, the industrial technology and enterprise advisory council committee established under section 122.152 of the Revised Code 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 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 shall send written notice of approval or disapproval to the business, the director of development, and the Edison center. If the committee 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 center to maintain the accuracy of the list. At the times required in the schedule, each business on the list shall submit any information the center 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) An Edison center 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 Edison centers 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. An Edison center 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. 122.171. (A) As used in this section:

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

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

(b) Project costs paid before January 1, 2002, or after December 31, 2006;

(c) Payments made to a related member as defined in section 5733.042 of the Revised Code.

(2) "Eligible business" means a business with Ohio operations satisfying all of the following:

(a) Employed an average of at least one thousand employees in full-time employment positions at a project site during each of the twelve months preceding the application for a tax credit under this section; and

(b) On or after January 1, 2002, has made payments for the capital investment project of either of the following:

(i) At least two hundred million dollars in the aggregate at the project site during a period of three consecutive calendar years including the calendar year that includes a day of the taxpayer's taxable year with respect to which the credit is granted;

(ii) If the average wage of all full-time employment positions at the project site is greater than four hundred per cent of the federal minimum wage, at least one hundred million dollars in the aggregate at the project site during a period of three consecutive calendar years including the calendar year that includes a day of the taxpayer's taxable year with respect to which the credit is granted.

(c) Is engaged at the project site primarily as a manufacturer or is providing significant corporate administrative functions;

(d) Has had a capital investment project reviewed and approved by the tax credit authority as provided in divisions (C), (D), and (E) of this section.

(3) "Full-time employment position" means a position of employment for consideration for at least thirty-five hours a week that has been filled for at least one hundred eighty days immediately preceding the filing of an application under this section and for at least one hundred eighty days during each taxable year with respect to which the credit is granted.

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

(5) "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.

(6) "Applicable corporation" means a corporation satisfying all of the following:

(a)(i) For the entire taxable year immediately preceding the tax year, the corporation develops software applications primarily to provide telecommunication billing and information services through outsourcing or licensing to domestic or international customers.

(ii) Sales and licensing of software generated at least six hundred million dollars in revenue during the taxable year immediately preceding the tax year the corporation is first entitled to claim the credit provided under division (B) of this section.

(b) For the entire taxable year immediately preceding the tax year, the corporation or one or more of its related members provides customer or employee care and technical support for clients through one or more contact centers within this state, and the corporation and its related members together have a daily average, based on a three hundred sixty-five day year, of at least five hundred thousand successful customer contacts through one or more of their contact centers, wherever located.

(c) The corporation is eligible for the credit under division (B) of this section for the tax year.

(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.

(8) "Successful customer contact" means a contact with an end user via telephone, including interactive voice recognition or similar means, where the contact culminates in a conversation or connection other than a busy signal or equipment busy.

(9) "Telecommunications" means all forms of telecommunications service as defined in section 5739.01 of the Revised Code, and includes services in wireless, wireline, cable, broadband, internet protocol, and

satellite.

(10)(a) "Applicable difference" means the difference between the tax for the tax year under Chapter 5733. of the Revised Code applying the law in effect for that tax year, and the tax for that tax year if section 5733.042 of the Revised Code applied as that section existed on the effective date of its amendment by Am. Sub. H.B. 215 of the 122nd general assembly, subject to division (A)(10)(b) of this section.

(b) If the tax rate set forth in division (B) of section 5733.06 of the Revised Code for the tax year is less than eight and one-half per cent, the tax calculated under division (A)(10)(a) of this section shall be computed by substituting a tax rate of eight and one-half per cent for the rate set forth in division (B) of section 5733.06 of the Revised Code for the tax year.

(c) If the resulting difference is negative, the applicable tax difference for the tax year shall be zero.

(B) The tax credit authority created under section 122.17 of the Revised Code may grant tax credits under this section for the purpose of fostering job retention in this state. Upon application by an eligible business and upon consideration of the recommendation of the director of budget and management, tax commissioner, and director of development under division (C) of this section, the tax credit authority may grant to an eligible business a nonrefundable credit against the tax imposed by section 5733.06 or 5747.02 of the Revised Code for a period up to ~~ten~~ fifteen taxable years. The credit shall be in an amount not exceeding seventy-five per cent of the Ohio income tax withheld from the employees of the eligible business occupying full-time employment positions at the project site during the calendar year that includes the last day of such business' taxable year with respect to which the credit is granted. The amount of the credit shall not be based on the Ohio income tax withheld from full-time employees for a calendar year prior to the calendar year in which the minimum investment requirement referred to in division (A)(2)(b) of this section is completed. The credit shall be claimed only for the taxable years specified in the eligible business' agreement with the tax credit authority under division (E) of this section, but in no event shall the credit be claimed for a taxable year terminating before the date specified in the agreement.

The credit computed under this division is in addition to any credit allowed under division (M) of this section which the tax credit authority may also include in the agreement.

Any unused portion of a tax credit may be carried forward for not more than three additional years after the year for which the credit is granted.

(C) A taxpayer that proposes a capital investment project to retain jobs

in this state may apply to the tax credit authority to enter into an agreement for a tax credit under this section. The director of development shall prescribe the form of the application. After receipt of an application, the authority shall forward copies of the application to the director of budget and management, the tax commissioner, and the director of development, each of whom shall review the application to determine the economic impact the proposed project would have on the state and the affected political subdivisions and shall submit a summary of their determinations and recommendations to the authority. The authority shall make no agreements under this section after June 30, 2007.

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

(1) The taxpayer's capital investment project will result in the retention of full-time employment positions in this state.

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

(3) The taxpayer intends to and has the ability to maintain operations at the project site for at least twice the term of the credit.

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

(5) The political subdivisions in which the project is located have agreed to provide substantial financial support to the project.

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

(1) A detailed description of the project that is the subject of the agreement, including the amount of the investment, the period over which the investment has been or is being made, and the number of full-time employment positions at the project site.

(2) The method of calculating the number of full-time employment positions as specified in division (A)(3) of this section.

(3) The term and percentage of the tax credit, and the first year for which the credit may be claimed.

(4) A requirement that the taxpayer maintain operations at the project site for at least twice the number of years as the term of the credit.

(5) A requirement that the taxpayer retain a specified number of full-time employment positions at the project site and within this state for the term of the credit, including a requirement that the taxpayer continue to employ at least one thousand employees in full-time employment positions at the project site during the entire term of any agreement, subject to

division (E)(7) of this section.

(6) A requirement that the taxpayer annually report to the director of development the number of full-time employment positions subject to the credit, the amount of tax withheld from employees in those positions, the amount of the payments made for the capital investment project, and any other information the director needs to perform the director's duties under this section.

(7) A requirement that the director of development annually review the annual reports of the taxpayer to verify the information reported under division (E)(6) of this section and compliance with the agreement. Upon verification, the director shall issue a certificate to the taxpayer stating that the information has been verified and identifying the amount of the credit for the taxable year. ~~The~~ Unless otherwise specified by the tax credit authority in a resolution and included as part of the agreement, the director shall not issue a certificate for any year in which the total number of filled full-time employment positions for each day of the calendar year divided by three hundred sixty-five is less than ninety per cent of the full-time employment positions specified in division (E)(5) of this section. In determining the number of full-time employment positions, no position shall be counted that is filled by an employee who is included in the calculation of a tax credit under section 122.17 of the Revised Code.

(8)(a) A provision requiring that the taxpayer, except as otherwise provided in division (E)(8)(b) of this section, shall not relocate employment positions from elsewhere in this state to the project site that is the subject of the agreement for the lesser of five years from the date the agreement is entered into or the number of years the taxpayer is entitled to claim the credit.

(b) The taxpayer may relocate employment positions from elsewhere in this state to the project site that is the subject of the agreement if the director of development determines both of the following:

(i) That the site from which the employment positions would be relocated is inadequate to meet market and industry conditions, expansion plans, consolidation plans, or other business considerations affecting the taxpayer;

(ii) That the legislative authority of the county, township, or municipal corporation from which the employment positions would be relocated has been notified of the relocation.

For purposes of this section, the movement of an employment position from one political subdivision to another political subdivision shall be considered a relocation of an employment position unless the movement is

confined to the project site. The transfer of an individual employee from one political subdivision to another political subdivision shall not be considered a relocation of an employment position as long as the individual's employment position in the first political subdivision is refilled.

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

(F) If a taxpayer fails to meet or comply with any condition or requirement set forth in a tax credit agreement, the tax credit authority may amend the agreement to reduce the percentage or term of the credit. The reduction of the percentage or term shall take effect in the taxable year immediately following the taxable year in which the authority amends the agreement. If the taxpayer relocates employment positions in violation of the provision required under division (D)(8)(a) of this section, the taxpayer shall not claim the tax credit under section 5733.0610 of the Revised Code for any tax years following the calendar year in which the relocation occurs, or shall not claim the tax credit under section 5747.058 of the Revised Code for the taxable year in which the relocation occurs and any subsequent taxable years.

(G) Financial statements and other information submitted to the department of development or the tax credit authority by an applicant for 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, the chairperson of the authority shall provide to the commissioner any statement or other information submitted by an applicant for or recipient of a tax credit in connection with the credit. The commissioner shall preserve the confidentiality of the statement or other information.

(H) A taxpayer claiming a tax credit under this section shall submit to the tax commissioner a copy of the director of development's certificate of verification under division (E)(7) of this section for the taxable year. However, failure to submit a copy of the certificate does not invalidate a claim for a credit.

(I) For the purposes of this section, a taxpayer may include a partnership, a corporation that has made an election under subchapter S of chapter one of subtitle A of the Internal Revenue Code, or any other



business entity through which income flows as a distributive share to its owners. A tax credit received under this section by a partnership, S-corporation, or other such business entity shall be apportioned among the persons to whom the income or profit of the partnership, S-corporation, or other entity is distributed, in the same proportions as those in which the income or profit is distributed.

(J) If the director of development determines that a taxpayer that received a tax credit under this section is not complying with the requirement under division (E)(4) of this section, the director shall notify the tax credit authority of the noncompliance. After receiving such a notice, and after giving the taxpayer an opportunity to explain the noncompliance, the authority may terminate the agreement and require the taxpayer to refund to the state all or a portion of the credit claimed in previous years, as follows:

(1) If the taxpayer maintained operations at the project site for less than the term of the credit, the amount required to be refunded shall not exceed the amount of any tax credits previously allowed and received under this section.

(2) If the taxpayer maintained operations at the project site longer than the term of the credit but less than one and one-half times the term of the credit, the amount required to be refunded shall not exceed fifty per cent of the sum of any tax credits previously allowed and received under this section.

(3) If the taxpayer maintained operations at the project site for at least one and one-half times the term of the credit but less than twice the term of the credit, the amount required to be refunded shall not exceed twenty-five per cent of the sum of any tax credits previously allowed and received under this section.

In determining the portion of the credit to be refunded to this state, the authority shall consider the effect of market conditions on the taxpayer's project and whether the taxpayer continues to maintain other operations in this state. After making the determination, the authority shall certify the amount to be refunded to the tax commissioner. The commissioner shall make an assessment for that amount against the taxpayer under Chapter 5733. or 5747. of the Revised Code. The time limitations on assessments under Chapter 5733. or 5747. of the Revised Code do not apply to an assessment under this division, but the commissioner shall make the assessment within one year after the date the authority certifies to the commissioner the amount to be refunded.

If the director of development determines that a taxpayer that received a tax credit under this section has reduced the number of employees agreed to

under division (E)(5) of this section by more than ten per cent, the director shall notify the tax credit authority of the noncompliance. After receiving such notice, and after providing the taxpayer an opportunity to explain the noncompliance, the authority may amend the agreement to reduce the percentage or term of the tax credit. The reduction in the percentage or term shall take effect in the taxable year in which the authority amends the agreement.

(K) The director of development, after consultation with the tax commissioner and in accordance with Chapter 119. of the Revised Code, shall adopt rules necessary to implement this section. The rules may provide for recipients of tax credits under this section to be charged fees to cover administrative costs of the tax credit program. At the time the director gives public notice under division (A) of section 119.03 of the Revised Code of the adoption of the rules, the director shall submit copies of the proposed rules to the chairpersons of the standing committees on economic development in the senate and the house of representatives.

(L) On or before the thirty-first day of March of each year, the director of development shall submit a report to the governor, the president of the senate, and the speaker of the house of representatives on the tax credit program under this section. The report shall include information on the number of agreements that were entered into under this section during the preceding calendar year, a description of the project that is the subject of each such agreement, and an update on the status of projects under agreements entered into before the preceding calendar year.

(M)(1) A nonrefundable credit shall be allowed to an applicable corporation and its related members in an amount equal to the applicable difference. The credit is in addition to the credit granted to the corporation or related members under division (B) of this section. The credit is subject to divisions (B) to (E) and division (J) of this section.

(2) A person qualifying as an applicable corporation under this section for a tax year does not necessarily qualify as an applicable corporation for any other tax year. No person is entitled to the credit allowed under division (M) of this section for the tax year immediately following the taxable year during which the person fails to meet the requirements in divisions (A)(6)(a)(i) and (A)(6)(b) of this section. No person is entitled to the credit allowed under division (M) of this section for any tax year for which the person is not eligible for the credit provided under division (B) of this section.

Sec. 166.01. As used in this chapter:

(A) "Allowable costs" means all or part of the costs of project facilities

or, eligible innovation projects, or eligible research and development projects, including costs of acquiring, constructing, reconstructing, rehabilitating, renovating, enlarging, improving, equipping, or furnishing project facilities or, eligible innovation projects, or eligible research and development projects, site clearance and preparation, supplementing and relocating public capital improvements or utility facilities, designs, plans, specifications, surveys, studies, and estimates of costs, expenses necessary or incident to determining the feasibility or practicability of assisting an eligible project or, an eligible innovation project, or an eligible research and development project, or providing project facilities or facilities related to an eligible innovation project or an eligible research and development project, architectural, engineering, and legal services fees and expenses, the costs of conducting any other activities as part of a voluntary action, and such other expenses as may be necessary or incidental to the establishment or development of an eligible project or, an eligible innovation project, or an eligible research and development project, and reimbursement of moneys advanced or applied by any governmental agency or other person for allowable costs.

(B) "Allowable innovation costs" includes allowable costs of eligible innovation projects and, in addition, includes the costs of research and development of eligible innovation projects; obtaining or creating any requisite software or computer hardware related to an eligible innovation project or the products or services associated therewith; testing (including, without limitation, quality control activities necessary for initial production), perfecting, and marketing of such products and services; creating and protecting intellectual property related to an eligible innovation project or any products or services related thereto, including costs of securing appropriate patent, trademark, trade secret, trade dress, copyright, or other form of intellectual property protection for an eligible innovation project or related products and services; all to the extent that such expenditures could be capitalized under then-applicable generally accepted accounting principles; and the reimbursement of moneys advanced or applied by any governmental agency or other person for allowable innovation costs.

(C) "Eligible innovation project" includes an eligible project, including any project facilities associated with an eligible innovation project and, in addition, includes all tangible and intangible property related to a new product or process based on new technology or the creative application of existing technology, including research and development, product or process testing, quality control, market research, and related activities, that is to be acquired, established, expanded, remodeled, rehabilitated, or modernized for

industry, commerce, distribution, or research, or any combination thereof, the operation of which, alone or in conjunction with other eligible projects, eligible innovation projects, or innovation property, will create new jobs or preserve existing jobs and employment opportunities and improve the economic welfare of the people of the state.

(D) "Eligible project" means project facilities to be acquired, established, expanded, remodeled, rehabilitated, or modernized for industry, commerce, distribution, or research, or any combination thereof, the operation of which, alone or in conjunction with other facilities, will create new jobs or preserve existing jobs and employment opportunities and improve the economic welfare of the people of the state. "Eligible project" includes, without limitation, a voluntary action. For purposes of this division, "new jobs" does not include existing jobs transferred from another facility within the state, and "existing jobs" includes only those existing jobs with work places within the municipal corporation or unincorporated area of the county in which the eligible project is located.

"Eligible project" does not include project facilities to be acquired, established, expanded, remodeled, rehabilitated, or modernized for industry, commerce, distribution, or research, or any combination of industry, commerce, distribution, or research, if the project facilities consist solely of point-of-final-purchase retail facilities. If the project facilities consist of both point-of-final-purchase retail facilities and nonretail facilities, only the portion of the project facilities consisting of nonretail facilities is an eligible project. If a warehouse facility is part of a point-of-final-purchase retail facility and supplies only that facility, the warehouse facility is not an eligible project. Catalog distribution facilities are not considered point-of-final-purchase retail facilities for purposes of this paragraph, and are eligible projects.

(E) "Eligible research and development project" means an eligible project, including project facilities, comprising, within, or related to, a facility or portion of a facility at which research is undertaken for the purpose of discovering information that is technological in nature and the application of which is intended to be useful in the development of a new or improved product, process, technique, formula, or invention, a new product or process based on new technology, or the creative application of existing technology.

(F) "Financial assistance" means inducements under division (B) of section 166.02 of the Revised Code, loan guarantees under section 166.06 of the Revised Code, and direct loans under section 166.07 of the Revised Code.

~~(F)~~(G) "Governmental action" means any action by a governmental agency relating to the establishment, development, or operation of an eligible project ~~or~~, eligible innovation project, or eligible research and development project, and project facilities that the governmental agency acting has authority to take or provide for the purpose under law, including, but not limited to, actions relating to contracts and agreements, zoning, building, permits, acquisition and disposition of property, public capital improvements, utility and transportation service, taxation, employee recruitment and training, and liaison and coordination with and among governmental agencies.

~~(G)~~(H) "Governmental agency" means the state and any state department, division, commission, institution or authority; a municipal corporation, county, or township, and any agency thereof, and any other political subdivision or public corporation or the United States or any agency thereof; any agency, commission, or authority established pursuant to an interstate compact or agreement; and any combination of the above.

~~(H)~~(I) "Innovation financial assistance" means inducements under division (B) of section 166.12 of the Revised Code, innovation Ohio loan guarantees under section 166.15 of the Revised Code, and innovation Ohio loans under section 166.16 of the Revised Code.

~~(I)~~(J) "Innovation Ohio loan guarantee reserve requirement" means, at any time, with respect to innovation loan guarantees made under section 166.15 of the Revised Code, a balance in the innovation Ohio loan guarantee fund equal to the greater of twenty per cent of the then-outstanding principal amount of all outstanding innovation loan guarantees made pursuant to section 166.15 of the Revised Code or fifty per cent of the principal amount of the largest outstanding guarantee made pursuant to section 166.15 of the Revised Code.

~~(J)~~(K) "Innovation property" includes property and also includes software, inventory, licenses, contract rights, goodwill, intellectual property, including without limitation, patents, patent applications, trademarks and service marks, and trade secrets, and other tangible and intangible property, and any rights and interests in or connected to the foregoing.

~~(K)~~(L) "Loan guarantee reserve requirement" means, at any time, with respect to loan guarantees made under section 166.06 of the Revised Code, a balance in the loan guarantee fund equal to the greater of twenty per cent of the then-outstanding principal amount of all outstanding guarantees made pursuant to section 166.06 of the Revised Code or fifty per cent of the principal amount of the largest outstanding guarantee made pursuant to section 166.06 of the Revised Code.

~~(L)~~(M) "Person" means any individual, firm, partnership, association, corporation, or governmental agency, and any combination thereof.

~~(M)~~(N) "Project facilities" means buildings, structures, and other improvements, and equipment and other property, excluding small tools, supplies, and inventory, and any one, part of, or combination of the above, comprising all or part of, or serving or being incidental to, an eligible project ~~or~~, an eligible innovation project, or an eligible research and development project, including, but not limited to, public capital improvements.

~~(N)~~(O) "Property" means real and personal property and interests therein.

~~(O)~~(P) "Public capital improvements" means capital improvements or facilities that any governmental agency has authority to acquire, pay the costs of, own, maintain, or operate, or to contract with other persons to have the same done, including, but not limited to, highways, roads, streets, water and sewer facilities, railroad and other transportation facilities, and air and water pollution control and solid waste disposal facilities.

~~(P)~~(Q) "Research and development financial assistance" means inducements under section 166.17 of the Revised Code, research and development loans under section 166.21 of the Revised Code, and research and development tax credits under sections 5733.352 and 5747.331 of the Revised Code.

(R) "Targeted innovation industry sectors" means industry sectors involving the production or use of advanced materials, instruments, controls and electronics, power and propulsion, biosciences, and information technology, or such other sectors as may be designated by the director of development.

~~(Q)~~(S) "Voluntary action" means a voluntary action, as defined in section 3746.01 of the Revised Code, that is conducted under the voluntary action program established in Chapter 3746. of the Revised Code.

~~(R)~~(T) "Project financing obligations" means obligations issued pursuant to section 166.08 of the Revised Code other than obligations for which the bond proceedings provide that bond service charges shall be paid from receipts of the state representing gross profit on the sale of spirituous liquor as referred to in division (B)(4) of section 4310.10 of the Revised Code.

~~(S)~~(U) "Regional economic development entity" means an entity that is under contract with the director of development to administer a loan program under this chapter in a particular area of this state.

Sec. 166.02. (A) The general assembly finds that many local areas throughout the state are experiencing economic stagnation or decline, and

that the economic development program provided for in sections 166.01 to 166.11 of the Revised Code will constitute a deserved, necessary reinvestment by the state in those areas, materially contribute to their economic revitalization, and result in improving the economic welfare of all the people of the state. Accordingly, it is declared to be the public policy of the state, through the operations under sections 166.01 to 166.11 of the Revised Code and other applicable laws adopted pursuant to Section 13 of Article VIII, Ohio Constitution, and other authority vested in the general assembly, to assist in and facilitate the establishment or development of eligible projects or assist and cooperate with any governmental agency in achieving such purpose.

(B) In furtherance of such public policy and to implement such purpose, the director of development may:

(1) After consultation with appropriate governmental agencies, enter into agreements with persons engaged in industry, commerce, distribution, or research and with governmental agencies to induce such persons to acquire, construct, reconstruct, rehabilitate, renovate, enlarge, improve, equip, or furnish, or otherwise develop, eligible projects and make provision therein for project facilities and governmental actions, as authorized by this chapter and other applicable laws, subject to any required actions by the general assembly or the controlling board and subject to applicable local government laws and regulations;

(2) Provide for the guarantees and loans as provided for in sections 166.06 and 166.07 of the Revised Code;

(3) Subject to release of such moneys by the controlling board, contract for labor and materials needed for, or contract with others, including governmental agencies, to provide, project facilities the allowable costs of which are to be paid for or reimbursed from moneys in the facilities establishment fund, and contract for the operation of such project facilities;

(4) Subject to release thereof by the controlling board, from moneys in the facilities establishment fund acquire or contract to acquire by gift, exchange, or purchase, including the obtaining and exercise of purchase options, property, and convey or otherwise dispose of, or provide for the conveyance or disposition of, property so acquired or contracted to be acquired by sale, exchange, lease, lease purchase, conditional or installment sale, transfer, or other disposition, including the grant of an option to purchase, to any governmental agency or to any other person without necessity for competitive bidding and upon such terms and conditions and manner of consideration pursuant to and as the director determines to be appropriate to satisfy the objectives of sections 166.01 to 166.11 of the

Revised Code;

(5) Retain the services of or employ financial consultants, appraisers, consulting engineers, superintendents, managers, construction and accounting experts, attorneys, and employees, agents, and independent contractors as are necessary in the director's judgment and fix the compensation for their services;

(6) Receive and accept from any person 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 such grants, gifts, and contributions are made;

(7) Enter into appropriate arrangements and agreements with any governmental agency for the taking or provision by that governmental agency of any governmental action;

(8) Do all other acts and enter into contracts and execute all instruments necessary or appropriate to carry out the provisions of Chapter 166. of the Revised Code;

(9) Adopt rules to implement any of the provisions of Chapter 166. of the Revised Code applicable to the director.

(C) The determinations by the director that facilities constitute eligible projects, that facilities are project facilities, that costs of such facilities are allowable costs, and all other determinations relevant thereto or to an action taken or agreement entered into shall be conclusive for purposes of the validity and enforceability of rights of parties arising from actions taken and agreements entered into under this chapter.

(D) Except as otherwise prescribed in Chapter 166. of the Revised Code, all expenses and obligations incurred by the director in carrying out the director's powers and in exercising the director's duties under Chapter 166. of the Revised Code, shall be payable solely from, as appropriate, moneys in the facilities establishment fund, the loan guarantee fund, the innovation Ohio loan guarantee fund, the innovation Ohio loan fund, the research and development loan fund, or moneys appropriated for such purpose by the general assembly. Chapter 166. of the Revised Code does not authorize the director or the issuing authority under section 166.08 of the Revised Code to incur bonded indebtedness of the state or any political subdivision thereof, or to obligate or pledge moneys raised by taxation for the payment of any bonds or notes issued or guarantees made pursuant to Chapter 166. of the Revised Code.

(E) No financial assistance for project facilities shall be provided under this chapter unless the provisions of the agreement providing for such assistance specify that all wages paid to laborers and mechanics employed



on such project facilities for which the assistance is granted shall be paid at the prevailing rates of wages of laborers and mechanics for the class of work called for by such project facilities, which wages shall be determined in accordance with the requirements of Chapter 4115. of the Revised Code for determination of prevailing wage rates, provided that the requirements of this division do not apply where the federal government or any of its agencies provides financing assistance as to all or any part of the funds used in connection with such project facilities and prescribes predetermined minimum wages to be paid to such laborers and mechanics; and provided further that should a nonpublic user beneficiary of the eligible project undertake, as part of the eligible project, construction to be performed by its regular bargaining unit employees who are covered under a collective bargaining agreement which was in existence prior to the date of the document authorizing such assistance then, in that event, the rate of pay provided under the collective bargaining agreement may be paid to such employees.

(F) Any governmental agency may enter into an agreement with the director, any other governmental agency, or a person to be assisted under this chapter, to take or provide for the purposes of this chapter any governmental action it is authorized to take or provide, and to undertake on behalf and at the request of the director any action which the director is authorized to undertake pursuant to divisions (B)(3), (4), and (5) of this section or divisions (B)(3), (4), and (5) of section 166.12 of the Revised Code. Governmental agencies of the state shall cooperate with and provide assistance to the director of development and the controlling board in the exercise of their respective functions under this chapter.

Sec. 166.08. (A) As used in this chapter:

(1) "Bond proceedings" means the resolution, order, trust agreement, indenture, lease, and other agreements, amendments and supplements to the foregoing, or any one or more or combination thereof, authorizing or providing for the terms and conditions applicable to, or providing for the security or liquidity of, obligations issued pursuant to this section, and the provisions contained in such obligations.

(2) "Bond service charges" means principal, including mandatory sinking fund requirements for retirement of obligations, and interest, and redemption premium, if any, required to be paid by the state on obligations.

(3) "Bond service fund" means the applicable fund and accounts therein created for and pledged to the payment of bond service charges, which may be, or may be part of, the economic development bond service fund created by division (S) of this section including all moneys and investments, and

earnings from investments, credited and to be credited thereto.

(4) "Issuing authority" means the treasurer of state, or the officer who by law performs the functions of such officer.

(5) "Obligations" means bonds, notes, or other evidence of obligation including interest coupons pertaining thereto, issued pursuant to this section.

(6) "Pledged receipts" means all receipts of the state representing the gross profit on the sale of spirituous liquor, as referred to in division (B)(4) of section 4301.10 of the Revised Code, after paying all costs and expenses of the division of liquor control and providing an adequate working capital reserve for the division of liquor control as provided in that division, but excluding the sum required by the second paragraph of section 4301.12 of the Revised Code, as in effect on May 2, 1980, to be paid into the state treasury; moneys accruing to the state from the lease, sale, or other disposition, or use, of project facilities, and from the repayment, including interest, of loans made from proceeds received from the sale of obligations; accrued interest received from the sale of obligations; income from the investment of the special funds; and any gifts, grants, donations, and pledges, and receipts therefrom, available for the payment of bond service charges.

(7) "Special funds" or "funds" means, except where the context does not permit, the bond service fund, and any other funds, including reserve funds, created under the bond proceedings, and the economic development bond service fund created by division (S) of this section to the extent provided in the bond proceedings, including all moneys and investments, and earnings from investment, credited and to be credited thereto.

(B) Subject to the limitations provided in section 166.11 of the Revised Code, the issuing authority, upon the certification by the director of development to the issuing authority of the amount of moneys or additional moneys needed in the facilities establishment fund, the loan guarantee fund, the innovation Ohio loan fund, ~~or the innovation Ohio loan guarantee fund,~~ or the research and development loan fund for the purpose of paying, or making loans for, allowable costs from the facilities establishment fund ~~or,~~ allowable innovation costs from the innovation Ohio loan fund, or allowable costs from the research and development loan fund, or needed for capitalized interest, for funding reserves, and for paying costs and expenses incurred in connection with the issuance, carrying, securing, paying, redeeming, or retirement of the obligations or any obligations refunded thereby, including payment of costs and expenses relating to letters of credit, lines of credit, insurance, put agreements, standby purchase agreements, indexing, marketing, remarketing and administrative arrangements, interest

swap or hedging agreements, and any other credit enhancement, liquidity, remarketing, renewal, or refunding arrangements, all of which are authorized by this section, or providing moneys for the loan guarantee fund or the innovation Ohio loan guarantee fund, as provided in this chapter or needed for the purposes of funds established in accordance with or pursuant to sections 122.35, 122.42, 122.54, 122.55, 122.56, 122.561, 122.57, and 122.80 of the Revised Code which are within the authorization of Section 13 of Article VIII, Ohio Constitution, shall issue obligations of the state under this section in the required amount; provided that such obligations may be issued to satisfy the covenants in contracts of guarantee made under section 166.06 or 166.15 of the Revised Code, notwithstanding limitations otherwise applicable to the issuance of obligations under this section. The proceeds of such obligations, except for the portion to be deposited in special funds, including reserve funds, as may be provided in the bond proceedings, shall as provided in the bond proceedings be deposited by the director of development to the facilities establishment fund, the loan guarantee fund, the innovation Ohio loan guarantee fund, ~~or the innovation Ohio loan fund,~~ or the research and development loan fund. Bond proceedings for project financing obligations may provide that the proceeds derived from the issuance of such obligations shall be deposited into such fund or funds provided for in the bond proceedings and, to the extent provided for in the bond proceedings, such proceeds shall be deemed to have been deposited into the facilities establishment fund and transferred to such fund or funds. The issuing authority may appoint trustees, paying agents, and transfer agents and may retain the services of financial advisors, accounting experts, and attorneys, and retain or contract for the services of marketing, remarketing, indexing, and administrative agents, other consultants, and independent contractors, including printing services, as are necessary in the issuing authority's judgment to carry out this section. The costs of such services are allowable costs payable from the facilities establishment fund or the research and development loan fund or allowable innovation costs payable from the innovation Ohio loan fund.

(C) The holders or owners of such obligations shall have no right to have moneys raised by taxation obligated or pledged, and moneys raised by taxation shall not be obligated or pledged, for the payment of bond service charges. Such holders or owners shall have no rights to payment of bond service charges from any moneys accruing to the state from the lease, sale, or other disposition, or use, of project facilities, or from payment of the principal of or interest on loans made, or fees charged for guarantees made, or from any money or property received by the director, treasurer of state, or

the state under Chapter 122. of the Revised Code, or from any other use of the proceeds of the sale of the obligations, and no such moneys may be used for the payment of bond service charges, except for accrued interest, capitalized interest, and reserves funded from proceeds received upon the sale of the obligations and except as otherwise expressly provided in the applicable bond proceedings pursuant to written directions by the director. The right of such holders and owners to payment of bond service charges is limited to all or that portion of the pledged receipts and those special funds pledged thereto pursuant to the bond proceedings in accordance with this section, and each such obligation shall bear on its face a statement to that effect.

(D) Obligations shall be authorized by resolution or order of the issuing authority and the bond proceedings shall provide for the purpose thereof and the principal amount or amounts, and shall provide for or authorize the manner or agency for determining the principal maturity or maturities, not exceeding twenty-five years from the date of issuance, the interest rate or rates or the maximum interest rate, the date of the obligations and the dates of payment of interest thereon, their denomination, and the establishment within or without the state of a place or places of payment of bond service charges. Sections 9.98 to 9.983 of the Revised Code are applicable to obligations issued under this section, subject to any applicable limitation under section 166.11 of the Revised Code. The purpose of such obligations may be stated in the bond proceedings in terms describing the general purpose or purposes to be served. The bond proceedings also shall provide, subject to the provisions of any other applicable bond proceedings, for the pledge of all, or such part as the issuing authority may determine, of the pledged receipts and the applicable special fund or funds to the payment of bond service charges, which pledges may be made either prior or subordinate to other expenses, claims, or payments, and may be made to secure the obligations on a parity with obligations theretofore or thereafter issued, if and to the extent provided in the bond proceedings. The pledged receipts and special funds so pledged and thereafter received by the state are immediately subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of any such pledges is valid and binding against all parties having claims of any kind against the state or any governmental agency of the state, irrespective of whether such parties have notice thereof, and shall create a perfected security interest for all purposes of Chapter 1309. of the Revised Code, without the necessity for separation or delivery of funds or for the filing or recording of the bond proceedings by which such pledge is created or any certificate, statement or other document

with respect thereto; and the pledge of such pledged receipts and special funds is effective and the money therefrom and thereof may be applied to the purposes for which pledged without necessity for any act of appropriation. Every pledge, and every covenant and agreement made with respect thereto, made in the bond proceedings may therein be extended to the benefit of the owners and holders of obligations authorized by this section, and to any trustee therefor, for the further security of the payment of the bond service charges.

(E) The bond proceedings may contain additional provisions as to:

(1) The redemption of obligations prior to maturity at the option of the issuing authority at such price or prices and under such terms and conditions as are provided in the bond proceedings;

(2) Other terms of the obligations;

(3) Limitations on the issuance of additional obligations;

(4) The terms of any trust agreement or indenture securing the obligations or under which the same may be issued;

(5) The deposit, investment and application of special funds, and the safeguarding of moneys on hand or on deposit, without regard to Chapter 131. or 135. of the Revised Code, but subject to any special provisions of this chapter, with respect to particular funds or moneys, provided that any bank or trust company which acts as depository of any moneys in the special funds may furnish such indemnifying bonds or may pledge such securities as required by the issuing authority;

(6) Any or every provision of the bond proceedings being binding upon such officer, board, commission, authority, agency, department, or other person or body as may from time to time have the authority under law to take such actions as may be necessary to perform all or any part of the duty required by such provision;

(7) Any provision that may be made in a trust agreement or indenture;

(8) Any other or additional agreements with the holders of the obligations, or the trustee therefor, relating to the obligations or the security therefor, including the assignment of mortgages or other security obtained or to be obtained for loans under section 122.43, 166.07, or 166.16 of the Revised Code.

(F) The obligations may have the great seal of the state or a facsimile thereof affixed thereto or printed thereon. The obligations and any coupons pertaining to obligations shall be signed or bear the facsimile signature of the issuing authority. Any obligations or coupons may be executed by the person who, on the date of execution, is the proper issuing authority although on the date of such bonds or coupons such person was not the

issuing authority. If the issuing authority whose signature or a facsimile of whose signature appears on any such obligation or coupon ceases to be the issuing authority before delivery thereof, such signature or facsimile is nevertheless valid and sufficient for all purposes as if the former issuing authority had remained the issuing authority until such delivery; and if the seal to be affixed to obligations has been changed after a facsimile of the seal has been imprinted on such obligations, such facsimile seal shall continue to be sufficient as to such obligations and obligations issued in substitution or exchange therefor.

(G) All obligations are negotiable instruments and securities under Chapter 1308. of the Revised Code, subject to the provisions of the bond proceedings as to registration. The obligations may be issued in coupon or in registered form, or both, as the issuing authority determines. Provision may be made for the registration of any obligations with coupons attached thereto as to principal alone or as to both principal and interest, their exchange for obligations so registered, and for the conversion or reconversion into obligations with coupons attached thereto of any obligations registered as to both principal and interest, and for reasonable charges for such registration, exchange, conversion, and reconversion.

(H) Obligations may be sold at public sale or at private sale, as determined in the bond proceedings.

Obligations issued to provide moneys for the loan guarantee fund or the innovation Ohio loan guarantee fund may, as determined by the issuing authority, be sold at private sale, and without publication of a notice of sale.

(I) Pending preparation of definitive obligations, the issuing authority may issue interim receipts or certificates which shall be exchanged for such definitive obligations.

(J) In the discretion of the issuing authority, obligations may be secured additionally by a trust agreement or indenture between the issuing authority and a corporate trustee which may be any trust company or bank having its principal place of business within the state. Any such agreement or indenture may contain the resolution or order authorizing the issuance of the obligations, any provisions that may be contained in any bond proceedings, and other provisions which are customary or appropriate in an agreement or indenture of such type, including, but not limited to:

(1) Maintenance of each pledge, trust agreement, indenture, or other instrument comprising part of the bond proceedings until the state has fully paid the bond service charges on the obligations secured thereby, or provision therefor has been made;

(2) In the event of default in any payments required to be made by the

bond proceedings, or any other agreement of the issuing authority made as a part of the contract under which the obligations were issued, enforcement of such payments or agreement by mandamus, the appointment of a receiver, suit in equity, action at law, or any combination of the foregoing;

(3) The rights and remedies of the holders of obligations and of the trustee, and provisions for protecting and enforcing them, including limitations on rights of individual holders of obligations;

(4) The replacement of any obligations that become mutilated or are destroyed, lost, or stolen;

(5) Such other provisions as the trustee and the issuing authority agree upon, including limitations, conditions, or qualifications relating to any of the foregoing.

(K) Any holders of obligations or trustees under the bond proceedings, except to the extent that their rights are restricted by the bond proceedings, may by any suitable form of legal proceedings, protect and enforce any rights under the laws of this state or granted by such bond proceedings. Such rights include the right to compel the performance of all duties of the issuing authority, the director of development, or the division of liquor control required by this chapter or the bond proceedings; to enjoin unlawful activities; and in the event of default with respect to the payment of any bond service charges on any obligations or in the performance of any covenant or agreement on the part of the issuing authority, the director of development, or the division of liquor control in the bond proceedings, to apply to a court having jurisdiction of the cause to appoint a receiver to receive and administer the pledged receipts and special funds, other than those in the custody of the treasurer of state, which are pledged to the payment of the bond service charges on such obligations or which are the subject of the covenant or agreement, with full power to pay, and to provide for payment of bond service charges on, such obligations, and with such powers, subject to the direction of the court, as are accorded receivers in general equity cases, excluding any power to pledge additional revenues or receipts or other income or moneys of the issuing authority or the state or governmental agencies of the state to the payment of such principal and interest and excluding the power to take possession of, mortgage, or cause the sale or otherwise dispose of any project facilities.

Each duty of the issuing authority and the issuing authority's officers and employees, and of each governmental agency and its officers, members, or employees, undertaken pursuant to the bond proceedings or any agreement or lease, lease-purchase agreement, or loan made under authority of this chapter, and in every agreement by or with the issuing authority, is

hereby established as a duty of the issuing authority, and of each such officer, member, or employee having authority to perform such duty, specifically enjoined by the law resulting from an office, trust, or station within the meaning of section 2731.01 of the Revised Code.

The person who is at the time the issuing authority, or the issuing authority's officers or employees, are not liable in their personal capacities on any obligations issued by the issuing authority or any agreements of or with the issuing authority.

(L) The issuing authority may authorize and issue obligations for the refunding, including funding and retirement, and advance refunding with or without payment or redemption prior to maturity, of any obligations previously issued by the issuing authority. Such obligations may be issued in amounts sufficient for payment of the principal amount of the prior obligations, any redemption premiums thereon, principal maturities of any such obligations maturing prior to the redemption of the remaining obligations on a parity therewith, interest accrued or to accrue to the maturity dates or dates of redemption of such obligations, and any allowable costs including expenses incurred or to be incurred in connection with such issuance and such refunding, funding, and retirement. Subject to the bond proceedings therefor, the portion of proceeds of the sale of obligations issued under this division to be applied to bond service charges on the prior obligations shall be credited to an appropriate account held by the trustee for such prior or new obligations or to the appropriate account in the bond service fund for such obligations. Obligations authorized under this division shall be deemed to be issued for those purposes for which such prior obligations were issued and are subject to the provisions of this section pertaining to other obligations, except as otherwise provided in this section; provided that, unless otherwise authorized by the general assembly, any limitations imposed by the general assembly pursuant to this section with respect to bond service charges applicable to the prior obligations shall be applicable to the obligations issued under this division to refund, fund, advance refund or retire such prior obligations.

(M) The authority to issue obligations under this section includes authority to issue obligations in the form of bond anticipation notes and to renew the same from time to time by the issuance of new notes. The holders of such notes or interest coupons pertaining thereto shall have a right to be paid solely from the pledged receipts and special funds that may be pledged to the payment of the bonds anticipated, or from the proceeds of such bonds or renewal notes, or both, as the issuing authority provides in the resolution or order authorizing such notes. Such notes may be additionally secured by



covenants of the issuing authority to the effect that the issuing authority and the state will do such or all things necessary for the issuance of such bonds or renewal notes in appropriate amount, and apply the proceeds thereof to the extent necessary, to make full payment of the principal of and interest on such notes at the time or times contemplated, as provided in such resolution or order. For such purpose, the issuing authority may issue bonds or renewal notes in such principal amount and upon such terms as may be necessary to provide funds to pay when required the principal of and interest on such notes, notwithstanding any limitations prescribed by or for purposes of this section. Subject to this division, all provisions for and references to obligations in this section are applicable to notes authorized under this division.

The issuing authority in the bond proceedings authorizing the issuance of bond anticipation notes shall set forth for such bonds an estimated interest rate and a schedule of principal payments for such bonds and the annual maturity dates thereof, and for purposes of any limitation on bond service charges prescribed under division (A) of section 166.11 of the Revised Code, the amount of bond service charges on such bond anticipation notes is deemed to be the bond service charges for the bonds anticipated thereby as set forth in the bond proceedings applicable to such notes, but this provision does not modify any authority in this section to pledge receipts and special funds to, and covenant to issue bonds to fund, the payment of principal of and interest and any premium on such notes.

(N) Obligations issued under this section are lawful investments for banks, societies for savings, savings and loan associations, deposit guarantee associations, trust companies, trustees, fiduciaries, insurance companies, including domestic for life and domestic not for life, trustees or other officers having charge of sinking and bond retirement or other special funds of political subdivisions and taxing districts of this state, the commissioners of the sinking fund of the state, the administrator of workers' compensation, the state teachers retirement system, the public employees retirement system, the school employees retirement system, and the Ohio police and fire pension fund, notwithstanding any other provisions of the Revised Code or rules adopted pursuant thereto by any governmental agency of the state with respect to investments by them, and are also acceptable as security for the deposit of public moneys.

(O) Unless otherwise provided in any applicable bond proceedings, moneys to the credit of or in the special funds established by or pursuant to this section may be invested by or on behalf of the issuing authority only in notes, bonds, or other obligations of the United States, or of any agency or

instrumentality of the United States, obligations guaranteed as to principal and interest by the United States, obligations of this state or any political subdivision of this state, and certificates of deposit of any national bank located in this state and any bank, as defined in section 1101.01 of the Revised Code, subject to inspection by the superintendent of banks. If the law or the instrument creating a trust pursuant to division (J) of this section expressly permits investment in direct obligations of the United States or an agency of the United States, unless expressly prohibited by the instrument, such moneys also may be invested in no-front-end-load money market mutual funds consisting exclusively of obligations of the United States or an agency of the United States and in repurchase agreements, including those issued by the fiduciary itself, secured by obligations of the United States or an agency of the United States; and in common trust funds established in accordance with section 1111.20 of the Revised Code and consisting exclusively of any such securities, notwithstanding division (A)(4) of that section. The income from such investments shall be credited to such funds as the issuing authority determines, and such investments may be sold at such times as the issuing authority determines or authorizes.

(P) Provision may be made in the applicable bond proceedings for the establishment of separate accounts in the bond service fund and for the application of such accounts only to the specified bond service charges on obligations pertinent to such accounts and bond service fund and for other accounts therein within the general purposes of such fund. Unless otherwise provided in any applicable bond proceedings, moneys to the credit of or in the several special funds established pursuant to this section shall be disbursed on the order of the treasurer of state, provided that no such order is required for the payment from the bond service fund when due of bond service charges on obligations.

(Q) The issuing authority may pledge all, or such portion as the issuing authority determines, of the pledged receipts to the payment of bond service charges on obligations issued under this section, and for the establishment and maintenance of any reserves, as provided in the bond proceedings, and make other provisions therein with respect to pledged receipts as authorized by this chapter, which provisions are controlling notwithstanding any other provisions of law pertaining thereto.

(R) The issuing authority may covenant in the bond proceedings, and any such covenants are controlling notwithstanding any other provision of law, that the state and applicable officers and governmental agencies of the state, including the general assembly, so long as any obligations are outstanding, shall:

(1) Maintain statutory authority for and cause to be charged and collected wholesale and retail prices for spirituous liquor sold by the state or its agents so that the pledged receipts are sufficient in amount to meet bond service charges, and the establishment and maintenance of any reserves and other requirements provided for in the bond proceedings, and, as necessary, to meet covenants contained in contracts of guarantee made under section 166.06 of the Revised Code;

(2) Take or permit no action, by statute or otherwise, that would impair the exemption from federal income taxation of the interest on the obligations.

(S) There is hereby created the economic development bond service fund, which shall be in the custody of the treasurer of state but shall be separate and apart from and not a part of the state treasury. All moneys received by or on account of the issuing authority or state agencies and required by the applicable bond proceedings, consistent with this section, to be deposited, transferred, or credited to a bond service fund or the economic development bond service fund, and all other moneys transferred or allocated to or received for the purposes of the fund, shall be deposited and credited to such fund and to any separate accounts therein, subject to applicable provisions of the bond proceedings, but without necessity for any act of appropriation. During the period beginning with the date of the first issuance of obligations and continuing during such time as any such obligations are outstanding, and so long as moneys in the pertinent bond service funds are insufficient to pay all bond services charges on such obligations becoming due in each year, a sufficient amount of the gross profit on the sale of spirituous liquor included in pledged receipts are committed and shall be paid to the bond service fund or economic development bond service fund in each year for the purpose of paying the bond service charges becoming due in that year without necessity for further act of appropriation for such purpose and notwithstanding anything to the contrary in Chapter 4301. of the Revised Code. The economic development bond service fund is a trust fund and is hereby pledged to the payment of bond service charges to the extent provided in the applicable bond proceedings, and payment thereof from such fund shall be made or provided for by the treasurer of state in accordance with such bond proceedings without necessity for any act of appropriation.

(T) The obligations, the transfer thereof, and the income therefrom, including any profit made on the sale thereof, shall at all times be free from taxation within the state.

Sec. 166.11. (A) The aggregate principal amount of project financing

obligations that may be issued under section 166.08 of the Revised Code is three hundred million dollars, plus the principal amount of such project financing obligations retired by payments. The aggregate principal amount of obligations, exclusive of project financing obligations, that may be issued under section 166.08 of the Revised Code is ~~three~~ five hundred million dollars, plus the principal amount of any such obligations retired by payment, the amounts held or obligations pledged for the payment of the principal amount of any such obligations outstanding, amounts in special funds held as reserves to meet bond service charges, and amounts of obligations issued to provide moneys required to meet payments from the loan guarantee fund created in section 166.06 of the Revised Code and the innovation Ohio loan guarantee fund created in section 166.15 of the Revised Code, ~~and minus the amount if any by which four per cent of the unpaid principal amount of loan repayments guaranteed under section 166.06 of the Revised Code exceeds the amount in the loan guarantee fund.~~ The terms of the obligations issued under section 166.08 of the Revised Code, other than obligations issued to meet guarantees that cannot be satisfied from amounts then held in the loan guarantee fund or the innovation Ohio loan guarantee fund, shall be such that the aggregate amount of moneys used from profit from the sale of spirituous liquor, and not from other sources, in any fiscal year shall not exceed ~~twenty-five~~ forty-five million dollars. For purposes of the preceding sentence, "other sources" include the annual investment income on special funds to the extent it will be available for payment of any bond service charges in lieu of use of profit from the sale of spirituous liquor, and shall be estimated on the basis of the expected funding of those special funds and assumed investment earnings thereon at a rate equal to the weighted average yield on investments of those special funds determined as of any date within sixty days immediately preceding the date of issuance of the bonds in respect of which the determination is being made. The determinations required by this division shall be made by the treasurer of state at the time of issuance of an issue of obligations and shall be conclusive for purposes of such issue of obligations from and after their issuance and delivery.

(B) The aggregate amount of the guaranteed portion of the unpaid principal of loans guaranteed under sections 166.06 and 166.15 of the Revised Code and the unpaid principal of loans made under sections 166.07 ~~and~~ 166.16, and 166.21 of the Revised Code may not at any time exceed ~~seven~~ eight hundred million dollars. Of that ~~seven~~ eight hundred million dollars, the aggregate amount of the guaranteed portion of the unpaid principal of loans guaranteed under sections 166.06 and 166.15 of the

Revised Code shall not at any time exceed two hundred million dollars. However, the limitations established under this division do not apply to loans made with proceeds from the issuance and sale of project financing obligations.

Sec. 166.13. (A) Prior to entering into each agreement to provide innovation financial assistance under sections 166.12, 166.15, and 166.16 of the Revised Code, the director of development shall determine whether the assistance will conform to the requirements of sections 166.12 to 166.16 of the Revised Code. Such determination, and the facts upon which it is based, shall be set forth by the director in submissions made to the controlling board for purposes of section 166.16 of the Revised Code and to the development ~~finance~~ financing advisory council under section 166.14 of the Revised Code. An agreement to provide assistance under sections 166.12, 166.15, and 166.16 of the Revised Code shall set forth the determination, which shall be conclusive for purposes of the validity and enforceability of the agreement and any innovation loan guarantees, innovation loans, or other agreements entered into pursuant to the agreement to provide innovation financial assistance.

(B) Whenever a person applies for innovation financial assistance under sections 166.12, 166.15, and 166.16 of the Revised Code and the eligible innovation project for which innovation financial assistance is requested is to relocate an eligible innovation project that is currently being operated by the person and that is located in another county, municipal corporation, or township, the director shall provide written notification to the appropriate local governmental bodies and state officials. The notification shall contain the following information:

- (1) The name of the person applying for innovation financial assistance;
- (2) The county, and the municipal corporation or township, in which the eligible innovation project for which innovation financial assistance is requested is located; and
- (3) The county, and the municipal corporation or township, in which the eligible innovation project to be replaced is located.

The director shall provide the written notification to the appropriate local governmental bodies and state officials so that they receive the notification at least five days before the development ~~finance~~ financing advisory council meeting at which the council considers the request for innovation financial assistance pursuant to sections 166.12, 166.15, and 166.16 of the Revised Code.

(C) As used in division (B) of this section:

- (1) "Appropriate local governmental bodies" means:

(a) The boards of county commissioners or legislative authorities of the county in which the project for which innovation financial assistance is requested is located and of the county in which the eligible innovation project to be replaced is located;

(b) The legislative authority of the municipal corporation or the board of township trustees of the township in which the eligible innovation project for which innovation financial assistance is requested is located; and

(c) The legislative authority of the municipal corporation or the board of township trustees of the township in which the eligible innovation project to be replaced is located.

(2) "State officials" means:

(a) The state representative and state senator in whose districts the project for which innovation financial assistance is requested is located;

(b) The state representative and state senator in whose districts the innovation project to be replaced is located.

Sec. 166.14. (A) In determining the eligible innovation projects to be assisted and the nature, amount, and terms of innovation financial assistance to be provided for an eligible innovation project under sections 166.12 to 166.16 of the Revised Code:

(1) The director of development shall take into consideration all of the following:

(a) The number of jobs to be created or preserved by the eligible innovation project, directly or indirectly;

(b) Payrolls, and the taxes generated, at both state and local levels, by or in connection with the eligible innovation project and by the employment created or preserved by or in connection with the eligible innovation project;

(c) The size, nature, and cost of the eligible innovation project, including the prospect of the eligible innovation project for providing long-term jobs in enterprises consistent with the changing economics of the state and the nation;

(d) The needs of any private sector enterprise to be assisted;

(e) The amount and kind of assistance, if any, to be provided to the private sector enterprise by other governmental agencies through tax exemption or abatement, financing assistance with industrial development bonds, and otherwise, with respect to the eligible innovation project or with respect to any providers of innovation property to be included as part of the eligible innovation project;

(f) The likelihood of the successful implementation of the proposed eligible innovation project;

(g) Whether the eligible innovation project involves the use of

technology in a targeted innovation industry sector.

(2) The benefits to the local area, including taxes, jobs, and reduced unemployment and reduced welfare costs, among others, may be accorded value in the leasing or sales of innovation project facilities and in loan and guarantee arrangements.

(3) In making determinations under division (A)(1) of this section, the director may consider the effect of an eligible innovation project upon any entity engaged to provide innovation property to be acquired, leased, or licensed in connection with such assistance.

(B) The director shall submit to the development ~~finance~~ financing advisory council data pertinent to the considerations set forth in division (A) of this section, the terms of the proposed innovation financial assistance, and such other relevant information as the council may request.

(C) The development ~~finance~~ financing advisory council, on the basis of such data, shall make recommendations as to the appropriateness of the innovation financial assistance to be provided. The recommendations may be revised to reflect any changes in the proposed innovation financial assistance as the director may submit to the council. The recommendations, as amended, of the council as to the appropriateness of the proposed innovation financial assistance shall be submitted to the controlling board.

(D) Financial statements and other data submitted to the director of development, the development ~~finance~~ financing advisory council, or the controlling board by any private sector person in connection with innovation financial assistance under sections 166.12, 166.15, and 166.16 of the Revised Code, or any information taken from such statements or data for any purpose, shall not be open to public inspection. The development ~~finance~~ financing advisory council in considering confidential information in connection with innovation financial assistance under this chapter may, only for consideration of the confidential information referred to, and in the manner provided in division (E) of section 121.22 of the Revised Code, close the meeting during such consideration.

Sec. 166.16. (A) The director of development, with the approval of the controlling board and subject to the other applicable provisions of this chapter, may lend moneys in the innovation Ohio loan fund to persons for the purpose of paying allowable innovation costs of an eligible innovation project if the director determines that:

(1) The project is an eligible innovation project and is economically sound.

(2) The borrower is unable to finance the necessary allowable costs through ordinary financial channels upon comparable terms.

(3) The amount to be lent from the innovation Ohio loan fund will not exceed ninety per cent of the total costs of the eligible innovation project.

(4) The repayment of the loan from the innovation Ohio loan fund will be secured by a mortgage, lien, assignment, or pledge, or other interest in property or innovation property at such level of priority and value as the director may determine necessary, provided that, in making such a determination, the director may take into account the value of any rights granted by the borrower to the director to control the use of any property or innovation property of the borrower under the circumstances described in the loan documents.

(B) The determinations of the director under division (A) of this section shall be conclusive for purposes of the validity of a loan commitment evidenced by a loan agreement signed by the director.

(C) Fees, charges, rates of interest, times of payment of interest and principal, and other terms, conditions, and provisions of and security for loans made from the innovation Ohio loan fund shall be such as the director determines to be appropriate and in furtherance of the purpose for which the loans are made. The moneys used in making the loans shall be disbursed from the innovation Ohio loan fund upon order of the director. Unless otherwise specified in any indenture or other instrument securing obligations under division (D) of section 166.08 of the Revised Code, any payments of principal and interest from loans made from the innovation Ohio loan fund shall be paid to the innovation Ohio loan fund and used for the purpose of making loans.

(D) ~~The~~ There is hereby created in the state treasury the innovation Ohio loan fund is hereby created as a special revenue fund and a trust fund which shall be in the custody of the treasurer of state but shall be separate and apart from and not a part of the state treasury. The fund shall consist of ~~all~~ grants, gifts, and contributions of moneys or rights to moneys lawfully designated for or deposited in such fund, all moneys and rights to moneys lawfully appropriated and transferred to such fund, including moneys received from the issuance of obligations for purposes of allowable innovation costs under section 166.08 of the Revised Code, and moneys deposited to such fund pursuant to divisions (C) and (G) of this section. All investment earnings on the cash balance in the fund shall be credited to the fund. ~~The innovation Ohio loan~~ fund shall not be comprised, in any part, of moneys raised by taxation.

(E) The director may take actions necessary or appropriate to collect or otherwise deal with any loan made under this section.

(F) The director may fix service charges for the making of a loan. The



charges shall be payable at such times and place and in such amounts and manner as may be prescribed by the director.

~~(G) The treasurer of state shall serve as an agent for the director in the making of deposits and withdrawals and maintenance of records pertaining to the innovation Ohio loan fund.~~

~~(H)~~(1) There shall be credited to the innovation Ohio loan fund the moneys received by this state from the repayment of innovation Ohio loans and recovery on loan guarantees, including interest thereon, made from the innovation Ohio loan fund or from the innovation Ohio loan guarantee fund and from the sale, lease, or other disposition of property acquired or constructed ~~from~~ with moneys in the innovation Ohio loan fund with moneys derived from the proceeds of the sale of obligations under section 166.08 of the Revised Code. Such moneys shall be applied as provided in this chapter pursuant to appropriations made by the general assembly.

(2) Notwithstanding division ~~(H)~~(G)(1) of this section, any amounts recovered on innovation Ohio loan guarantees shall be deposited to the credit of the innovation Ohio loan guarantee fund to the extent necessary to restore that fund to the innovation Ohio loan guarantee reserve requirement or any level in excess thereof required by any guarantee contract. Money in the innovation Ohio loan guarantee fund in excess of the innovation Ohio loan guarantee reserve requirement, but subject to the provisions and requirements of any guarantee contracts, may be transferred to the innovation Ohio loan fund by the treasurer of state upon the order of the director of development.

(3) In addition to the requirements of division ~~(H)~~(G)(1) of this section, moneys referred to in that division may be deposited to the credit of separate accounts within the innovation Ohio loan fund or in the bond service fund and pledged to the security of obligations, applied to the payment of bond service charges without need for appropriation, released from any such pledge and transferred to the innovation Ohio loan fund, all as and to the extent provided in the bond proceedings pursuant to written directions by the director of development. Accounts may be established by the director in the innovation Ohio loan fund for particular projects or otherwise. ~~Income from the investment of moneys in the innovation Ohio loan fund shall be credited to that fund and, as may be provided in bond proceedings, to particular accounts in that fund.~~ The ~~treasurer of state~~ director may withdraw from the innovation Ohio loan fund or, subject to provisions of the applicable bond proceedings, from any special funds established pursuant to the bond proceedings, or from any accounts in such funds, any amounts of investment income required to be rebated and paid to the federal

government in order to maintain the exemption from federal income taxation of interest on obligations issued under this chapter, which withdrawal and payment may be made without necessity for appropriation.

Sec. 166.17. (A) The general assembly finds that in order to enhance the economic opportunities available to and improve the economic welfare of all the people of the state, and to maintain and enhance the competitiveness of the Ohio economy, it is necessary to ensure that the people of the state will continue to have access to high-value jobs in technology, and that, to facilitate such continued access, it is necessary to provide incentives to retain and attract businesses that will develop new or improved technologies, processes, and products, or apply existing technologies in new ways. Further, the general assembly finds that the attraction of such jobs and their presence in this state will materially contribute to the economic welfare of all the people of the state. Accordingly, it is declared to be the public policy of this state, through operations under sections 166.17 to 166.21, 5733.352, and 5747.331 of the Revised Code and the provisions for financial assistance contained in those sections, other applicable laws adopted pursuant to Section 13 of Article VIII, Ohio Constitution, and other authority vested in the general assembly, to assist in and facilitate the establishment or development of eligible research and development projects or assist and cooperate with any governmental agency in achieving that purpose.

(B) In furtherance of that public policy and to implement that purpose, the director of development may do any of the following:

(1) After consultation with appropriate governmental agencies, enter into agreements with persons engaged in industry, commerce, distribution, or research and with governmental agencies, to induce such persons to acquire, construct, reconstruct, rehabilitate, renovate, enlarge, improve, equip, furnish, or develop eligible research and development projects, or to enable governmental agencies to acquire, construct, reconstruct, rehabilitate, renovate, enlarge, improve, equip, furnish, or develop eligible research and development projects for lease to persons engaged in industry, commerce, distribution, or research;

(2) Provide for loans under section 166.21 of the Revised Code to finance eligible research and development projects;

(3) Subject to the release of moneys in the research and development loan fund by the controlling board, contract for labor and materials needed for, or contract with others, including governmental agencies, to provide, eligible research and development projects, the allowable costs of which are to be paid for or reimbursed from such moneys, and contract for the

operation of those projects:

(4) From moneys in the research and development loan fund, subject to release thereof by the controlling board, acquire or contract to acquire property by gift, exchange, or purchase, including by obtaining and exercising purchase options, and convey or otherwise dispose of, or provide for the conveyance or disposition of, that property by sale, exchange, lease, lease purchase, conditional or installment sale, transfer, or other disposition, including the grant of an option to purchase, to any governmental agency or to any other person without necessity for competitive bidding and upon such terms and conditions and manner of consideration pursuant to, and as the director determines to be appropriate to satisfy the objectives of, Chapter 166. of the Revised Code;

(5) Retain the services of or employ financial consultants, appraisers, consulting engineers, superintendents, managers, construction and accounting experts, attorneys, employees, agents, and independent contractors as are necessary in the director's judgment, and fix the compensation for their services;

(6) Receive and accept from any person, 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 such grants, gifts, and contributions are made;

(7) Enter into arrangements and agreements with any governmental agency for the agency to take or provide any governmental action with respect to eligible research and development projects;

(8) Do all other acts, enter into contracts, execute all instruments, and make all certifications necessary or appropriate to carry out sections 166.01, 166.17 to 166.21, 5733.352, and 5747.331 of the Revised Code;

(9) With respect to property that is the subject of or related to research and development financial assistance, take such interests, including, but not limited to, mortgages, security interests, leasehold interests, assignments, and exclusive or nonexclusive licenses, as may be necessary or appropriate under the circumstances, to ensure that the property is used within this state and that products or services associated with that property are produced or, in the case of services, delivered, by persons employed within this state;

(10) Adopt rules necessary to implement any of the provisions of sections 166.17 to 166.21, 5733.352, and 5747.331 of the Revised Code that are applicable to the director.

(C) The determination by the director that facilities or property constitute an eligible research and development project and that the costs of such facilities or property are allowable costs related to the project, and all

other determinations relevant thereto, or to an action taken or agreement entered into, shall be conclusive for purposes of the validity and enforceability of rights of parties arising from actions taken and agreements entered into under sections 166.17 to 166.21, 5733.352, and 5747.331 of the Revised Code.

Sec. 166.18. (A) Prior to entering into each agreement to provide research and development financial assistance, the director of development shall determine whether the assistance will conform to the requirements of sections 166.17 to 166.21, 5733.352, and 5747.331 of the Revised Code. Such determination, and the facts upon which it is based, shall be set forth by the director in submissions made to the controlling board for purposes of section 166.17 of the Revised Code and to the development financing advisory council under section 166.19 of the Revised Code. An agreement to provide research and development financial assistance under section 166.17 or 166.21 of the Revised Code shall set forth the determination, which shall be conclusive for purposes of the validity and enforceability of the agreement, and any loans or other agreements entered into pursuant to the agreement, to provide research and development financial assistance.

(B) Whenever a person applies for research and development financial assistance, and the eligible research and development project for which that assistance is requested is to relocate an eligible research and development project that is currently being operated by the person and that is located in another county, municipal corporation, or township within the state, the director shall provide written notification to the appropriate local governmental bodies and state officials. The notification shall state all of the following:

(1) The name of the person applying for research and development financial assistance;

(2) The county, and the municipal corporation or township, in which the project for which research and development financial assistance is requested will be located;

(3) The county, and the municipal corporation or township, in which the eligible research and development project is located at the time such financial assistance is requested.

The director shall provide the written notification to the appropriate local governmental bodies and state officials so that they receive the notification at least five days before the development financing advisory council meeting at which the council considers the request for research and development financial assistance.

(C) As used in division (B) of this section:

(1) "Appropriate local governmental bodies" means all of the following:

(a) The board of county commissioners of or legislative authorities of special districts in the county in which the eligible research and development project for which research and development financial assistance is requested is located and of the county in which the project will be located;

(b) The legislative authority of the municipal corporation or the board of township trustees of the township in which the eligible research and development project for which research and development financial assistance is requested is located and of the municipal corporation or township in which the project will be located.

(2) "State officials" means both of the following:

(a) The state representative and state senator in whose district the eligible research and development project for which research and development financial assistance is requested is located;

(b) The state representative and state senator in whose district the eligible research and development project will be located.

Sec. 166.19. (A)(1) In determining the eligible research and development projects to be assisted and the nature, amount, and terms of the research and development financial assistance to be provided, the director of development shall consider all of the following:

(a) The number of jobs to be created or preserved, directly or indirectly, by or in connection with the eligible research and development project;

(b) Payrolls, and the taxes generated at both state and local levels, by the eligible research and development project and by the employment created or preserved by or in connection with the project;

(c) The size, nature, and cost of the eligible research and development project;

(d) The likelihood that the eligible research and development project will create long-term jobs in enterprises consistent with the changing economy of the state and nation;

(e) The needs of any private sector enterprise to be assisted, taking into consideration the amount and kind of assistance, if any, to be provided to the private sector enterprise by other governmental agencies through tax exemption or abatement, financing assistance with industrial development bonds, and otherwise, with respect to the eligible research and development project or with respect to any providers of research and development property to be included as part of the project;

(f) The likelihood that the eligible research and development project will be successfully implemented.

(2) The director may consider the benefits to the local area, including taxes, jobs, and reduced unemployment and reduced welfare costs, in the leasing or sale of eligible research and development project facilities and in loan arrangements.

(3) The director may consider the effect of an eligible research and development project upon any entity engaged to provide research and development property to be acquired, leased, or licensed in connection with research and development financial assistance.

(B) The director shall submit to the development financing advisory council data pertinent to the considerations set forth in division (A) of this section, the terms of the proposed research and development assistance, and such other relevant information as the council may request.

(C) The development financing advisory council, on the basis of the data submitted under division (B) of this section, shall make recommendations as to the appropriateness of the research and development financial assistance to be provided. The recommendations may be revised to reflect any changes in the proposed research and development financial assistance that the director may submit to the council. The recommendations of the council as to the appropriateness of the proposed research and development financial assistance shall be submitted to the controlling board.

(D) Financial statements and other data submitted to the director of development, the development financing advisory council, or the controlling board by any private sector person in connection with research and development financial assistance, or any information taken from such statements or data for any purpose, shall not be open to public inspection. The development financing advisory council, in considering confidential information in connection with research and development financial assistance may, only for consideration of the confidential information referred to and in the manner provided in division (E) of section 121.22 of the Revised Code, close the meeting during such consideration.

Sec. 166.20. There is hereby created in the state treasury the research and development loan fund. The fund shall consist of moneys received from the issuance of obligations for research and development purposes under section 166.08 of the Revised Code; moneys deposited to the fund pursuant to divisions (C) and (G) of section 166.21 of the Revised Code; service charges imposed under section 166.21 of the Revised Code; and any grants, gifts, or contributions of money received by the director of development to be used for making loans under section 166.21 of the Revised Code. All investment earnings on the cash balance in the fund shall be credited to the fund. The fund shall not be comprised, in any part, of moneys raised by

taxation.

Sec. 166.21. (A) The director of development, with the approval of the controlling board and subject to other applicable provisions of this chapter, may lend moneys in the research and development loan fund to persons for the purpose of paying allowable costs of eligible research and development projects, if the director determines that all of the following conditions are met:

(1) The project is an eligible research and development project and is economically sound;

(2) The amount to be lent from the research and development loan fund will not exceed seventy-five per cent of the total costs of the eligible research and development project;

(3) The repayment of the loan from the research and development loan fund will be secured by a mortgage, lien, assignment, pledge, or other interest in property or other assets of the borrower at such level of priority and value as the director considers necessary, provided that, in making such a determination, the director shall take into account the value of any rights granted by the borrower to the director to control the use of any assets of the borrower under the circumstances described in the loan documents.

(B) The determinations of the director under division (A) of this section shall be conclusive for purposes of the validity of a loan commitment evidenced by a loan agreement signed by the director.

(C) Fees, charges, rates of interest, times of payment of interest and principal, and other terms and conditions of, and security for, loans made from the research and development loan fund shall be such as the director determines to be appropriate and in furtherance of the purpose for which the loans are made. The moneys used in making loans shall be disbursed from the fund upon order of the director. Unless otherwise specified in any indenture or other instrument securing obligations under division (D) of section 166.08 of the Revised Code, any payments of principal and interest from loans made from the fund shall be paid to the fund and used for the purpose of making loans under this section.

(D)(1) As used in this division, "qualified research and development loan payments" means payments of principal and interest on a loan made from the research and development loan fund.

(2) Each year, the director may, upon request, issue a certificate to a borrower of moneys from the research and development loan fund indicating the amount of the qualified research and development loan payments made by or on behalf of the borrower during the calendar year immediately preceding the tax year, as defined in section 5733.04 of the

Revised Code, or taxable year, as defined in section 5747.01 of the Revised Code, for which the certificate is issued. In addition to indicating the amount of qualified research and development loan payments, the certificate shall include a determination of the director that as of the thirty-first day of December of the calendar year for which the certificate is issued, the borrower is not in default under the loan agreement, lease, or other instrument governing repayment of the loan, including compliance with the job creation and retention commitments that are part of the qualified research and development project. The director shall not issue a certificate in an amount that exceeds one hundred fifty thousand dollars.

(E) The director may take actions necessary or appropriate to collect or otherwise deal with any loan made under this section.

(F) The director may fix service charges for the making of a loan. The charges shall be payable at such times and place and in such amounts and manner as may be prescribed by the director.

(G)(1) There shall be credited to the research and development loan fund moneys received by this state from the repayment of loans, including interest thereon, made from the fund, and moneys received from the sale, lease, or other disposition of property acquired or constructed with moneys in the fund derived from the proceeds of the sale of obligations under section 166.08 of the Revised Code. Moneys in the fund shall be applied as provided in this chapter pursuant to appropriations made by the general assembly.

(2) In addition to the requirements in division (G)(1) of this section, moneys referred to in that division may be deposited to the credit of separate accounts established by the director of development within the research and development loan fund or in the bond service fund and pledged to the security of obligations, applied to the payment of bond service charges without need for appropriation, released from any such pledge and transferred to the research and development loan fund, all as and to the extent provided in the bond proceedings pursuant to written directions of the director of development. Accounts may be established by the director in the research and development loan fund for particular projects or otherwise. The director may withdraw from the fund or, subject to provisions of the applicable bond proceedings, from any special funds established pursuant to the bond proceedings, or from any accounts in such funds, any amounts of investment income required to be rebated and paid to the federal government in order to maintain the exemption from federal income taxation of interest on obligations issued under this chapter, which withdrawal and payment may be made without the necessity for



appropriation.

Sec. 184.04. (A) The Ohio research commercialization grant program is hereby created to improve the commercial viability of research projects by improving the ability of small technology companies to assess their commercial potential and the commercial potential of research projects, and by promoting the competitiveness of these companies through the augmentation of federal research and development funding. The third frontier commission shall award grants to eligible applicants on a competitive basis for the following purposes:

(1) Commercialization of a core competency technology, including, but not limited to, advanced materials; instruments, controls, and electronics; biosciences; power and propulsion; and information technology;

(2) Other business activities related to the commercialization of a core competency technology.

(B) In order to be eligible for an Ohio research commercialization grant, the applicant shall demonstrate both of the following to the third frontier commission:

(1) It is located in Ohio;

(2) It either:

(a) Has received a phase I award of funds under the small business innovation research program or the small business technology transfer program established in 15 U.S.C. 638, or a similar award of federal funds under a program designated by the third frontier commission as qualifying an applicant for a grant under this section; or

(b) Demonstrates eligibility for an award of funds under the federal advanced technology program established in 15 U.S.C. 278n or a similar federal program designated by the third frontier commission as qualifying an applicant for a grant under this section.

(C) The third frontier commission shall review proposals from applicants that meet the requirements stated in division (B) of this section, and may issue commitments to applicants for conditional grants of funds under this section, conditioned on the applicant receiving a phase II award of funds under the federal small business innovation research program or the small business technology transfer program, an award of funds under the federal advanced technology program, or an award of federal funds under a similar federal program designated by the director.

(D) No funds shall be disbursed under the Ohio research commercialization grant program until the third frontier commission has received notice from the applicant, in such form as the commission prescribes, that the applicant has received an award of federal funds under a

program described in division (B)(2)(b) or (C) of this section.

(E) An eligible applicant that receives a grant under the Ohio research commercialization grant program is not precluded from being considered for or participating in other financial assistance programs offered by the department of development.

(F) The third frontier commission shall adopt rules under Chapter 119. of the Revised Code establishing all of the following:

(1) Forms and procedures by which eligible applicants may apply for grants under this section;

(2) Criteria for reviewing, evaluating, and ranking applications, and for approving applications from eligible applicants that best serve the goals of the Ohio research commercialization grant program;

(3) Reporting requirements and monitoring procedures;

(4) The federal awards and programs that make an applicant eligible for a grant under divisions (B) and (C) of this section;

(5) Any other rules necessary to implement and administer the Ohio research commercialization grant program.

Sec. 5733.352. (A) As used in this section:

(1) "Borrower" means any person that receives a loan from the director of development under section 166.21 of the Revised Code, regardless of whether the borrower is subject to the taxes imposed by sections 5733.06, 5733.065, and 5733.066 of the Revised Code.

(2) "Related member" has the same meaning as in section 5733.042 of the Revised Code.

(3) "Qualified research and development loan payments" has the same meaning as in division (D) of section 166.21 of the Revised Code.

(B) Beginning in tax year 2004, a nonrefundable credit is allowed against the taxes imposed by sections 5733.06, 5733.065, and 5733.066 of the Revised Code equal to a borrower's qualified research and development loan payments made during the calendar year immediately preceding the tax year for which the credit is claimed. The amount of the credit for a tax year shall not exceed one hundred fifty thousand dollars. No taxpayer is entitled to claim a credit under this section unless it has obtained a certificate issued by the director of development under division (D) of section 166.21 of the Revised Code. The credit shall be claimed in the order required under section 5733.98 of the Revised Code. The credit, to the extent it exceeds the taxpayer's tax liability for the tax year after allowance for any other credits that precede the credit under this section in that order, shall be carried forward to the next succeeding tax year or years until fully used.

(C) A borrower entitled to a credit under this section may assign the

credit, or a portion thereof, to any of the following:

(1) A related member of that borrower;

(2) The owner or lessee of the eligible research and development project;

(3) A related member of the owner or lessee of the eligible research and development project.

A borrower making an assignment under this division shall provide written notice of the assignment to the tax commissioner and the director of development, in such form as the tax commissioner prescribes, before the credit that was assigned is used. The assignor may not claim the credit to the extent it was assigned to an assignee. The assignee may claim the credit only to the extent the assignor has not claimed it.

(D) If any taxpayer is a partner in a partnership or a member in a limited liability company treated as a partnership for federal income tax purposes, the taxpayer shall be allowed the taxpayer's distributive or proportionate share of the credit available through the partnership or limited liability company.

(E) The aggregate credit against the taxes imposed by sections 5733.06, 5733.065, 5733.066, and 5747.02 of the Revised Code that may be claimed under this section and section 5747.331 of the Revised Code by a borrower as a result of qualified research and development loan payments attributable during a calendar year to any one loan shall not exceed one hundred fifty thousand dollars.

Sec. 5733.98. (A) To provide a uniform procedure for calculating the amount of tax imposed by section 5733.06 of the Revised Code that is due under this chapter, a taxpayer shall claim any credits to which it is entitled in the following order, except as otherwise provided in section 5733.058 of the Revised Code:

(1) The credit for taxes paid by a qualifying pass-through entity allowed under section 5733.0611 of the Revised Code;

(2) The credit allowed for financial institutions under section 5733.45 of the Revised Code;

(3) The credit for qualifying affiliated groups under section 5733.068 of the Revised Code;

(4) The subsidiary corporation credit under section 5733.067 of the Revised Code;

(5) The savings and loan assessment credit under section 5733.063 of the Revised Code;

(6) The credit for recycling and litter prevention donations under section 5733.064 of the Revised Code;

(7) The credit for employers that enter into agreements with child day-care centers under section 5733.36 of the Revised Code;

(8) The credit for employers that reimburse employee child day-care expenses under section 5733.38 of the Revised Code;

(9) The credit for maintaining railroad active grade crossing warning devices under section 5733.43 of the Revised Code;

(10) The credit for purchases of lights and reflectors under section 5733.44 of the Revised Code;

(11) The job retention credit under division (B) of section 5733.0610 of the Revised Code;

(12) The credit for losses on loans made under the Ohio venture capital program under sections 150.01 to 150.10 of ~~the~~ the Revised Code if the taxpayer elected a nonrefundable credit under section 150.07 of the Revised Code;

(13) The credit for purchases of new manufacturing machinery and equipment under section 5733.31 or section 5733.311 of the Revised Code;

(14) The second credit for purchases of new manufacturing machinery and equipment under section 5733.33 of the Revised Code;

(15) The job training credit under section 5733.42 of the Revised Code;

(16) The credit for qualified research expenses under section 5733.351 of the Revised Code;

(17) The enterprise zone credit under section 5709.66 of the Revised Code;

(18) The credit for the eligible costs associated with a voluntary action under section 5733.34 of the Revised Code;

(19) The credit for employers that establish on-site child day-care under section 5733.37 of the Revised Code;

(20) The ethanol plant investment credit under section 5733.46 of the Revised Code;

(21) The credit for purchases of qualifying grape production property under section 5733.32 of the Revised Code;

(22) The export sales credit under section 5733.069 of the Revised Code;

(23) The credit for research and development and technology transfer investors under section 5733.35 of the Revised Code;

(24) The enterprise zone credits under section 5709.65 of the Revised Code;

(25) The credit for using Ohio coal under section 5733.39 of the Revised Code;

(26) The research and development credit under section 5733.352 of the

Revised Code:

(27) The refundable jobs creation credit under division (A) of section 5733.0610 of the Revised Code;

(27)(28) The refundable credit for tax withheld under division (B)(2) of section 5747.062 of the Revised Code;

(28)(29) The credit for losses on loans made to the Ohio venture capital program under sections 150.01 to 150.10 of the Revised Code if the taxpayer elected a refundable credit under section 150.07 of the Revised Code.

(B) For any credit except the credits enumerated in divisions (A)~~(26)~~, (27), ~~and (28)~~, and (29) of this section, the amount of the credit for a tax year shall not exceed the tax due after allowing for any other credit that precedes it in the order required under this section. Any excess amount of a particular credit may be carried forward if authorized under the section creating that credit.

Sec. 5747.331. (A) As used in this section:

(1) "Borrower" means any person that receives a loan from the director of development under section 166.21 of the Revised Code, regardless of whether the borrower is subject to the tax imposed by section 5747.02 of the Revised Code.

(2) "Related member" has the same meaning as in section 5733.042 of the Revised Code.

(3) "Qualified research and development loan payments" has the same meaning as in division (D) of section 166.21 of the Revised Code.

(B) Beginning in taxable year 2003, a nonrefundable credit is allowed against the tax imposed by section 5747.02 of the Revised Code equal to a borrower's qualified research and development loan payments made during the calendar year that includes the last day of the taxable year for which the credit is claimed. The amount of the credit for a taxable year shall not exceed one hundred fifty thousand dollars. No taxpayer is entitled to claim a credit under this section unless it has obtained a certificate issued by the director of development under division (D) of section 166.21 of the Revised Code. The credit shall be claimed in the order required under section 5747.98 of the Revised Code. The credit, to the extent it exceeds the taxpayer's tax liability for the taxable year after allowance for any other credits that precede the credit under this section in that order, shall be carried forward to the next succeeding taxable year or years until fully used.

(C) A borrower entitled to a credit under this section may assign the credit, or a portion thereof, to any of the following:

(1) A related member of that borrower;

(2) The owner or lessee of the eligible research and development project;

(3) A related member of the owner or lessee of the eligible research and development project.

A borrower making an assignment under this division shall provide written notice of the assignment to the tax commissioner and the director of development, in such form as the tax commissioner prescribes, before the credit that was assigned is used. The assignor may not claim the credit to the extent it was assigned to an assignee. The assignee may claim the credit only to the extent the assignor has not claimed it.

(D) If any taxpayer is a shareholder in an S corporation, a partner in a partnership, or a member in a limited liability company treated as a partnership for federal income tax purposes, the taxpayer shall be allowed the taxpayer's distributive or proportionate share of the credit available through the S corporation, partnership, or limited liability company.

(E) The aggregate credit against the taxes imposed by sections 5733.06, 5733.065, 5733.066, and 5747.02 of the Revised Code that may be claimed under this section and section 5733.352 of the Revised Code by a borrower as a result of qualified research and development loan payments attributable during a calendar year to any one loan shall not exceed one hundred fifty thousand dollars.

Sec. 5747.98. (A) To provide a uniform procedure for calculating the amount of tax due under section 5747.02 of the Revised Code, a taxpayer shall claim any credits to which the taxpayer is entitled in the following order:

(1) The retirement income credit under division (B) of section 5747.055 of the Revised Code;

(2) The senior citizen credit under division (C) of section 5747.05 of the Revised Code;

(3) The lump sum distribution credit under division (D) of section 5747.05 of the Revised Code;

(4) The dependent care credit under section 5747.054 of the Revised Code;

(5) The lump sum retirement income credit under division (C) of section 5747.055 of the Revised Code;

(6) The lump sum retirement income credit under division (D) of section 5747.055 of the Revised Code;

(7) The lump sum retirement income credit under division (E) of section 5747.055 of the Revised Code;

(8) The credit for displaced workers who pay for job training under

section 5747.27 of the Revised Code;

(9) The campaign contribution credit under section 5747.29 of the Revised Code;

(10) The twenty-dollar personal exemption credit under section 5747.022 of the Revised Code;

(11) The joint filing credit under division (G) of section 5747.05 of the Revised Code;

(12) The nonresident credit under division (A) of section 5747.05 of the Revised Code;

(13) The credit for a resident's out-of-state income under division (B) of section 5747.05 of the Revised Code;

(14) The credit for employers that enter into agreements with child day-care centers under section 5747.34 of the Revised Code;

(15) The credit for employers that reimburse employee child day-care expenses under section 5747.36 of the Revised Code;

(16) The credit for adoption of a minor child under section 5747.37 of the Revised Code;

(17) The credit for purchases of lights and reflectors under section 5747.38 of the Revised Code;

(18) The job retention credit under division (B) of section 5747.058 of the Revised Code;

(19) The credit for losses on loans made under the Ohio venture capital program under sections 150.01 to 150.10 of the Revised Code if the taxpayer elected a nonrefundable credit under section 150.07 of the Revised Code;

(20) The credit for purchases of new manufacturing machinery and equipment under section 5747.26 or section 5747.261 of the Revised Code;

(21) The second credit for purchases of new manufacturing machinery and equipment and the credit for using Ohio coal under section 5747.31 of the Revised Code;

(22) The job training credit under section 5747.39 of the Revised Code;

(23) The enterprise zone credit under section 5709.66 of the Revised Code;

(24) The credit for the eligible costs associated with a voluntary action under section 5747.32 of the Revised Code;

(25) The credit for employers that establish on-site child day-care centers under section 5747.35 of the Revised Code;

(26) The ethanol plant investment credit under section 5747.75 of the Revised Code;

(27) The credit for purchases of qualifying grape production property

under section 5747.28 of the Revised Code;

(28) The export sales credit under section 5747.057 of the Revised Code;

(29) The credit for research and development and technology transfer investors under section 5747.33 of the Revised Code;

(30) The enterprise zone credits under section 5709.65 of the Revised Code;

(31) The research and development credit under section 5747.331 of the Revised Code;

(32) The refundable jobs creation credit under division (A) of section 5747.058 of the Revised Code;

~~(32)~~(33) The refundable credit for taxes paid by a qualifying entity granted under section 5747.059 of the Revised Code;

~~(33)~~(34) The refundable credits for taxes paid by a qualifying pass-through entity granted under division (J) of section 5747.08 of the Revised Code;

~~(34)~~(35) The refundable credit for tax withheld under division (B)(1) of section 5747.062 of the Revised Code;

~~(35)~~(36) The credit for losses on loans made to the Ohio venture capital program under sections 150.01 to 150.10 of the Revised Code if the taxpayer elected a refundable credit under section 150.07 of the Revised Code.

(B) For any credit, except the credits enumerated in divisions (A)~~(31)~~(32) to ~~(35)~~(36) of this section and the credit granted under division (I) of section 5747.08 of the Revised Code, the amount of the credit for a taxable year shall not exceed the tax due after allowing for any other credit that precedes it in the order required under this section. Any excess amount of a particular credit may be carried forward if authorized under the section creating that credit. Nothing in this chapter shall be construed to allow a taxpayer to claim, directly or indirectly, a credit more than once for a taxable year.

SECTION 2. That existing sections 122.15, 122.151, 122.152, 122.154, 122.171, 166.01, 166.02, 166.08, 166.11, 166.13, 166.14, 166.16, 5733.98, and 5747.98 of the Revised Code are hereby repealed.

SECTION 3. All items in this section are hereby appropriated as designated out of any moneys in the state treasury to the credit of the Research and Development Fund (Fund 010). For all appropriations made in



this act, those in the first column are for fiscal year 2004 and those in the second column are for fiscal year 2005. The appropriations made in this act are in addition to any other appropriations made for the 2003-2005 biennium.

#### DEV DEPARTMENT OF DEVELOPMENT

#### Appropriations

##### Research and Development Loan Fund

010 195-665	Research and Development	\$	50,000,000	\$	55,000,000
TOTAL 010 Research and Development Loan Fund		\$	50,000,000	\$	55,000,000
TOTAL ALL BUDGET FUND GROUPS		\$	50,000,000	\$	55,000,000

#### REASERCH AND DEVELOPMENT

The foregoing appropriation item 195-665, Research and Development, shall be used to provide for research and development purposes including loans pursuant to Chapter 166. and particularly sections 166.17 to 166.21 of the Revised Code. Of the foregoing appropriation item 195-665, Research and Development, the unencumbered balance of the appropriation at the end of fiscal year 2004 is transferred by the Director of Budget and Management to fiscal year 2005.

Within the limits set forth in this act, the Director of Budget and Management shall establish accounts indicating source and amount of funds for each appropriation made in this act, and shall determine the form and manner in which appropriation accounts shall be maintained. Expenditures from appropriations contained in this act shall be accounted for as though made in Am. Sub. H.B. 95 of the 125th General Assembly.

The appropriations made in this act are subject to all provisions of Am. Sub. H.B. 95 of the 125th General Assembly that are generally applicable to such appropriations.

SECTION 4. That Section 41 of Am. Sub. H.B. 94 of the 124th General Assembly, as most recently amended by Am. Sub. H.B. 405 of the 124th General Assembly, be amended to read as follows:

#### Sec. 41. DEV DEPARTMENT OF DEVELOPMENT

##### General Revenue Fund

GRF 195-100	Personal Services	\$	2,651,334	\$	2,920,941
GRF 195-200	Maintenance	\$	589,524	\$	601,314
GRF 195-300	Equipment	\$	108,161	\$	110,324
GRF 195-401	Thomas Edison Program	\$	20,000,000	\$	20,000,000
GRF 195-404	Small Business Development	\$	2,452,342	\$	2,529,843
GRF 195-405	Minority Business Development Division	\$	2,278,888	\$	2,297,314

GRF 195-406	Transitional and Permanent Housing	\$	2,770,145	\$	2,770,155
GRF 195-407	Travel and Tourism	\$	6,345,500	\$	6,448,399
GRF 195-408	Coal Research Development	\$	562,551	\$	585,290
GRF 195-412	Business Development Grants	\$	8,033,935	\$	9,092,851
GRF 195-414	First Frontier Match	\$	490,000	\$	490,000
GRF 195-415	Regional Offices and Economic Development	\$	6,420,675	\$	6,735,253
GRF 195-416	Governor's Office of Appalachia	\$	5,466,954	\$	5,475,126
GRF 195-417	Urban/Rural Initiative	\$	980,000	\$	980,000
GRF 195-422	Technology Action	\$	14,000,000	\$	14,000,000
GRF 195-426	Clean Ohio Implementation	\$	448,000	\$	641,000
GRF 195-431	Community Development Corporation Grants	\$	2,530,860	\$	2,530,860
GRF 195-432	International Trade	\$	5,390,000	\$	5,551,700
GRF 195-434	Investment in Training Grants	\$	12,500,000	\$	12,500,000
GRF 195-436	Labor/Management Cooperation	\$	1,146,805	\$	1,152,752
GRF 195-440	Emergency Shelter Housing Grants	\$	2,768,313	\$	2,841,441
GRF 195-441	Low and Moderate Income Housing	\$	19,000,000	\$	19,000,000
GRF 195-497	CDBG Operating Match	\$	1,208,576	\$	1,215,295
GRF 195-498	State Energy Match	\$	153,558	\$	158,548
GRF 195-501	Appalachian Local Development Districts	\$	453,962	\$	453,962
GRF 195-502	Appalachian Regional Commission Dues	\$	219,912	\$	219,912
GRF 195-505	Utility Bill Credits	\$	7,350,000	\$	7,350,000
GRF 195-507	Travel and Tourism Grants	\$	1,250,000	\$	1,250,000
GRF 195-906	Coal Research and Development General Obligation Debt Service	\$	8,971,700	\$	9,420,300
<b>TOTAL GRF General Revenue Fund</b>		\$	136,541,695	\$	139,322,580
<b>General Services Fund Group</b>					
135 195-605	Supportive Services	\$	9,038,988	\$	9,531,707
136 195-621	International Trade	\$	100,000	\$	24,915
685 195-636	General Reimbursements	\$	1,275,234	\$	1,323,021
<b>TOTAL GSF General Services Fund Group</b>		\$	10,414,222	\$	10,879,643
<b>Federal Special Revenue Fund Group</b>					
3K8 195-613	Community Development Block Grant	\$	65,149,441	\$	65,088,961
3K9 195-611	Home Energy Assistance Block Grant	\$	62,000,000	\$	62,000,000
3K9 195-614	HEAP Weatherization	\$	10,412,041	\$	10,412,041
3L0 195-612	Community Services Block Grant	\$	22,135,000	\$	22,135,000
3V1 195-601	HOME Program	\$	40,000,000	\$	40,000,000
3X3 195-619	TANF Housing Program	\$	5,200,000	\$	0
308 195-602	Appalachian Regional Commission	\$	350,000	\$	350,200

## Am. Sub. H. B. No. 1

59

308	195-603	Housing and Urban Development	\$	5,000,000	\$	5,000,000
308	195-605	Federal Projects	\$	7,855,501	\$	7,855,501
308	195-609	Small Business Administration	\$	3,799,626	\$	3,799,626
308	195-618	Energy Federal Grants	\$	2,803,560	\$	2,803,560
335	195-610	Oil Overcharge	\$	8,500,000	\$	8,500,000
380	195-622	Housing Development Operating	\$	4,507,212	\$	4,696,198
TOTAL FED Federal Special Revenue Fund Group			\$	237,712,381	\$	232,641,087
<b>State Special Revenue Fund Group</b>						
4F2	195-639	State Special Projects	\$	1,052,762	\$	1,079,082
4H4	195-641	First Frontier	\$	600,000	\$	650,000
4S0	195-630	Enterprise Zone Operating	\$	211,900	\$	211,900
4S1	195-634	Job Creation Tax Credit Operating	\$	372,700	\$	375,800
4W1	195-646	Minority Business Enterprise Loan	\$	2,572,960	\$	2,580,597
444	195-607	Water and Sewer Commission Loans	\$	511,000	\$	523,775
445	195-617	Housing Finance Operating	\$	3,782,808	\$	3,968,184
450	195-624	Minority Business Bonding Program Administration	\$	13,232	\$	13,563
451	195-625	Economic Development Financing Operating	\$	2,062,451	\$	2,143,918
5M4	195-659	Universal Service	\$	160,000,000	\$	160,000,000
5M5	195-660	Energy Efficiency Revolving Loan	\$	12,000,000	\$	12,000,000
611	195-631	Water and Sewer Administration	\$	15,330	\$	15,713
617	195-654	Volume Cap Administration	\$	200,000	\$	200,000
646	195-638	Low and Moderate Income Housing Trust Fund	\$	21,539,552	\$	22,103,807
TOTAL SSR State Special Revenue Fund Group			\$	204,934,695	\$	205,866,339
<b>Facilities Establishment Fund</b>						
037	195-615	Facilities Establishment	\$	56,701,684	\$	58,119,226
4Z6	195-647	Rural Industrial Park Loan	\$	5,000,000	\$	5,000,000
5D1	195-649	Port Authority Bond Reserves	\$	2,500,000	\$	2,500,000
5D2	195-650	Urban Redevelopment Loans	\$	10,000,000	\$	10,475,000
5H1	195-652	Family Farm Loan Guarantee	\$	2,246,375	\$	2,246,375
5S8	195-627	Rural Development Initiative	\$	5,000,000	\$	5,000,000
5S9	195-628	Capital Access Loan Program	\$	3,000,000	\$	3,000,000
TOTAL 037 Facilities Establishment Fund			\$	84,448,059	\$	86,340,601
<b><u>Innovation Ohio Loan Fund</u></b>						
009	195-664	<u>Innovation Ohio</u>	<u>\$</u>	<u>0</u>	<u>\$</u>	<u>50,000,000</u>
<b><u>TOTAL 009 Innovation Ohio Loan Fund</u></b>			<b><u>\$</u></b>	<b><u>0</u></b>	<b><u>\$</u></b>	<b><u>50,000,000</u></b>
<b>Coal Research/Development Fund</b>						
046	195-632	Coal Research and Development Fund	\$	12,847,178	\$	13,168,357
TOTAL 046 Coal Research/						

Development Fund	\$	12,847,178	\$	13,168,357
TOTAL ALL BUDGET FUND GROUPS	\$	686,898,230	\$	<del>688,218,607</del>
				<u>738,218,607</u>

SECTION 5. That existing Section 41 of Am. Sub. H.B. 94 of the 124th General Assembly, as most recently amended by Am. Sub. H.B. 405 of the 124th General Assembly, is hereby repealed.

SECTION 6. That Section 41.15 of Am. Sub. H.B. 94 of the 124th General Assembly, as amended by Am. Sub. H.B. 405 of the 124th General Assembly, be amended to read as follows:

**Sec. 41.15. FACILITIES ESTABLISHMENT FUND**

The foregoing appropriation item 195-615, Facilities Establishment (Fund 037), shall be used for the purposes of the Facilities Establishment Fund under Chapter 166. of the Revised Code.

Notwithstanding Chapter 166. of the Revised Code, up to \$1,600,000 may be transferred each fiscal year from the Facilities Establishment Fund (Fund 037) to the Economic Development Financing Operating Fund (Fund 451). The transfer is subject to Controlling Board approval pursuant to division (B) of section 166.03 of the Revised Code.

Notwithstanding Chapter 166. of the Revised Code, up to \$3,800,000 may be transferred in each fiscal year of the biennium from the Facilities Establishment Fund (Fund 037) to the Minority Business Enterprise Loan Fund (Fund 4W1). The transfer is subject to Controlling Board approval pursuant to division (B) of section 166.03 of the Revised Code.

Notwithstanding Chapter 166. of the Revised Code, up to \$5,000,000 cash may be transferred during the biennium from the Facilities Establishment Fund (Fund 037) to the Port Authority Bond Reserves Fund (Fund 5D1) for use by any port authority in establishing or supplementing bond reserve funds for any bond issuance permitted under Chapter 4582. of the Revised Code. The Director of Development shall develop program guidelines for the transfer and release of funds, including, but not limited to, a provision that a port authority shall receive not more than \$2,000,000 total from the fund. The transfer and release of funds are subject to Controlling Board approval.

Notwithstanding Chapter 166. of the Revised Code, up to \$20,475,000 cash may be transferred during the biennium from the Facilities Establishment Fund (Fund 037) to the Urban Redevelopment Loans Fund (Fund 5D2) for the purpose of removing barriers to urban core redevelopment. The Director of Development shall develop program

guidelines for the transfer and release of funds, including, but not limited to, the completion of all appropriate environmental assessments before state assistance is committed to a project.

Notwithstanding Chapter 166. of the Revised Code, up to \$5,000,000 per fiscal year in cash may be transferred from the Facilities Establishment Fund (Fund 037) to the Rural Industrial Park Loan Fund (Fund 4Z6). The transfer is subject to Controlling Board approval pursuant to section 166.03 of the Revised Code.

#### FAMILY FARM LOAN PROGRAM

Notwithstanding Chapter 166. of the Revised Code, up to \$2,246,375 in each fiscal year shall be transferred from moneys in the Facilities Establishment Fund (Fund 037) to the Family Farm Loan Fund (Fund 5H1) in the Department of Development. These moneys shall be used for loan guarantees. The transfer is subject to Controlling Board approval.

Financial assistance from the Family Farm Loan Fund (Fund 5H1) shall be repaid to Fund 5H1. This fund is established in accordance with sections 166.031, 901.80, 901.81, 901.82, and 901.83 of the Revised Code.

When the Family Farm Loan Fund (Fund 5H1) ceases to exist, all outstanding balances, all loan repayments, and any other outstanding obligations shall revert to the Facilities Establishment Fund (Fund 037).

#### RURAL DEVELOPMENT INITIATIVE FUND

(A)(1) There is hereby created in the state treasury the Rural Development Initiative Fund (Fund 5S8). The fund shall receive moneys from the Facilities Establishment Fund. The Director of Development may make grants from the fund as specified in division (A)(2) of this section to eligible applicants in Appalachian counties and in rural counties in the state that are designated as distressed pursuant to section 122.25 of the Revised Code. Preference shall be given to eligible applicants located in Appalachian counties designated as distressed by the federal Appalachian Regional Commission. The fund shall cease to exist after June 30, 2007. All moneys remaining in the fund after that date shall revert to the Facilities Establishment Fund.

(2) The Director of Development shall make grants from the Rural Development Initiative Fund only to eligible applicants who also qualify for and receive funding under the Rural Industrial Park Loan Program as specified in sections 122.23 to 122.27 of the Revised Code. Eligible applicants shall use the grants for the purposes specified in section 122.24 of the Revised Code. All projects supported by grants from the fund are subject to Chapter 4115. of the Revised Code as specified in division (E) of section 166.02 of the Revised Code. The Director shall develop program guidelines

for the transfer and release of funds. The release of grant moneys to an eligible applicant is subject to Controlling Board approval.

(B) Notwithstanding Chapter 166. of the Revised Code, the Director of Budget and Management may transfer up to \$5,000,000 per fiscal year in cash on an as needed basis at the request of the Director of Development from the Facilities Establishment Fund (Fund 037) to the Rural Development Initiative Fund (Fund 5S8). The transfer is subject to Controlling Board approval pursuant to section 166.03 of the Revised Code.

#### CAPITAL ACCESS LOAN PROGRAM

The foregoing appropriation item 195-628, Capital Access Loan Program, shall be used for operating, program, and administrative expenses of the program. Funds for the Capital Access Loan Program shall be used to assist participating financial institutions in making program loans to eligible businesses that face barriers in accessing working capital and obtaining fixed asset financing.

Notwithstanding Chapter 166. of the Revised Code, the Director of Budget and Management may transfer up to \$3,000,000 per fiscal year in cash on an as needed basis at the request of the Director of Development from the Facilities Establishment Fund (Fund 037) to the Capital Access Loan Program Fund (Fund 5S9). The transfer is subject to Controlling Board approval pursuant to section 166.03 of the Revised Code.

#### INNOVATION OHIO LOAN PROGRAM

The foregoing appropriation item 195-664, Innovation Ohio, shall be used to provide for Innovation Ohio loans and loan guarantees pursuant the Chapter 166. and particularly sections 166.12 to 166.16 of the Revised Code.

SECTION 7. That existing Section 41.15 of Am. Sub. H.B. 94 of the 124th General Assembly, as amended by Am. Sub. H.B. 405 of the 124th General Assembly, is hereby repealed.

SECTION 8. The codified and uncoded sections of law contained in this act are not subject to the referendum. Therefore, under Section 1d of Article II, Ohio Constitution and section 1.471 of the Revised Code, the codified and uncoded sections of law contained in this act go into immediate effect when this act becomes law.

SECTION 9. Section 122.171 of the Revised Code is presented in this act as a composite of the section as amended by both H.B. 675 and Am. Sub. S.B. 180 of the 124th 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.

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*Speaker \_\_\_\_\_ of the House of Representatives.*

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*President \_\_\_\_\_ of the Senate.*

Passed \_\_\_\_\_, 20\_\_\_\_

Approved \_\_\_\_\_, 20\_\_\_\_

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*Governor.*

The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

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*Director, Legislative Service Commission.*

Filed in the office of the Secretary of State at Columbus, Ohio, on the  
\_\_\_\_ day of \_\_\_\_\_, A. D. 20\_\_\_\_.

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*Secretary of State.*

File No. \_\_\_\_\_ Effective Date \_\_\_\_\_