



## **Am. Sub. H.B. 1**

125th General Assembly  
(As Passed by the General Assembly)

- Reps.** T. Patton, Collier, C. Evans, Aslanides, Brown, Chandler, Distel, Gibbs, Gilb, Hagan, Harwood, Price, Schaffer, Schlichter, Skindell, J. Stewart, Strahorn, Sykes, Taylor, Walcher, Wolpert, Barrett, Book, Calvert, Carano, Cates, DeBose, DeWine, Domenick, Flowers, Hartnett, Hughes, Jolivette, Key, Mason, Miller, Niehaus, Oelslager, Olman, Otterman, S. Patton, Reidelbach, Schmidt, Seaver, Seitz, Setzer, G. Smith, S. Smith, D. Stewart, Trakas, White, Widener, Woodard, Yates, Martin
- Sens.** Amstutz, Austria, Carey, Carnes, Dann, Fingerhut, Randy Gardner, Harris, Herington, Mumper, White, Jacobson, Schuring, Armbruster, Hagan, Stivers, Spada, Prentiss, Robert Gardner, Fedor

**Effective date:** \*

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## **ACT SUMMARY**

### **Research and Development Loan Fund Program**

- Establishes the Research and Development Loan Fund Program and authorizes the Director of Development to operate the Program and make loans from the Research and Development Loan Fund (R&D Loan Fund) created by the act to finance eligible research and development projects.
- Appropriates \$50 million in fiscal year 2004 and \$55 million in fiscal year 2005 to the R&D Loan Fund.
- Permits the Treasurer of State to issue obligations to pay allowable costs or make loans for eligible research and development projects under the Program.

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\* *The Legislative Service Commission had not received formal notification of the effective date at the time this analysis was prepared. Additionally, the analysis may not reflect action taken by the Governor.*

- Establishes administrative procedures and criteria for financial assistance under the Program that are similar to those for the existing Facilities Establishment Fund Program and the Innovation Ohio Loan Fund Program.
- Permits the Director to lend moneys in the R&D Loan Fund to persons for paying the allowable costs of an eligible research and development project, specifies that a loan cannot exceed 75% of the total costs of the project, and that repayment must be secured by a mortgage or other interest.
- Permits the Director, with money from the R&D Loan Fund, to enter into agreements with businesses and governmental agencies to induce research and development projects, and to acquire property and convey it to businesses or governmental agencies without competitive bidding, and upon whatever terms and conditions and in whatever manner the Director considers appropriate.
- Permits the Director to take an interest in property, by mortgage, security interest, or other methods, to ensure that property associated with an eligible research and development project is used in Ohio, and products produced, and services associated with the property are delivered, by persons employed within Ohio.
- Establishes notification procedures the Director must follow if an eligible project is being relocated within the state.
- Creates a nonrefundable credit against the corporation franchise and income taxes for qualified payments, not to exceed \$150,000 for a tax year or taxable year, made on loans issued by the Director, and permits the assignment of these credits to certain other taxpayers.
- Adds the R&D Loan Fund to the list of economic development funds used to pay expenses incurred by the Director in administering economic development programs.
- Increases the maximum aggregate principal amount of obligations, excluding project financing obligations, that may be issued to fund the R&D Loan Fund and other economic development funds, from \$300 million to \$500 million.

- Increases the maximum amount of liquor profits that may be used to back obligations issued to fund the R&D Loan Fund and other economic development funds, from \$25 million to \$45 million per fiscal year.
- Increases from \$700 million to \$800 million the maximum aggregate unpaid principal of loans and loan guarantees made from the Facilities Establishment Fund, the Loan Guarantee Fund, the Innovation Ohio Loan Guarantee Fund, and the Innovation Ohio Loan Fund, and adds to the aggregate the unpaid principal of loans made from the R&D Loan Fund.

### **Ohio Research Commercialization Grant Program**

- Creates the Ohio Research Commercialization Grant Program to provide grants from the Third Frontier Commission to small technology companies in Ohio that are receiving or are eligible to receive funding under certain federal research and technology programs.
- Establishes administrative procedures and criteria for assistance under the Ohio Research and Commercialization Grant Program.

### **Technology investment tax credits**

- Grants the three-person Industrial Technology and Enterprise Advisory Council Committee, rather than the full Council, the authority to issue technology investment tax credits under the Technology Investment Tax Credit Program.
- Raises the gross revenue or net book value eligibility requirements for a technology investment tax credit, from less than \$1 million to less than \$2.5 million.
- Increases the total amount of technology investments that may be approved by the Committee in any one Ohio business, from \$1 million to \$1.5 million.
- Increases the total amount of technology investment tax credits that may be issued, from \$10 million to \$20 million.
- Increases the amount of the investment for which a technology investment tax credit can be claimed and the maximum amount of investments that an investor can make in one business, from \$150,000 to \$250,000, and from \$150,000 to \$300,000 with respect to investments in

businesses certified by the Director of Administrative Services as EDGE Business Enterprises under the Encouraging Diversity, Growth, and Equity (EDGE) Program or in Ohio entities located in distressed areas.

- Increases the amount of the technology investment tax credit that may be claimed by an investor in an EDGE Business Enterprise or in an Ohio entity located in a distressed area, from 25% of the amount of the investment to 30%.
- Requires that the Director of Development develop the form of, and that the Director and the Chairperson of the Council Committee sign, technology investment tax credit certificates.
- Requires that the Director report to the Tax Commissioner any information requested by the Commissioner about technology investment tax credit certificates.

**Innovation Ohio Loan Fund Program**

- Moves the Innovation Ohio Loan Fund into the state treasury.
- Makes an appropriation of \$50 million to the Innovation Ohio Loan Fund for loans and loan guarantees for fiscal year 2003.
- Makes various corrections to the laws governing the Program.

**Job retention tax credits**

- Increases the maximum term of the job retention tax credit, changes the job retention requirements for the job retention tax credit, and creates a new tax credit for certain corporations that operate call centers and that are receiving the job retention tax credit, all of which are also contained in Am. Sub. H.B. 95 of the 125th General Assembly (the main operating budget for FY 2004 and 2005), and adds a provision permitting the Tax Credit Authority to include the new call center tax credit in a job retention tax credit agreement.

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## CONTENT AND OPERATION

### Research and Development Loan Fund Program

#### Legislative declaration of intent

(R.C. 166.17(A))

The act finds that in order to enhance the economic opportunities available to and improve the economic welfare of all the people of Ohio, and to maintain and enhance the competitiveness of the Ohio economy, it is necessary to ensure that Ohioans will continue to have access to high-value technology jobs by providing incentives to retain and attract businesses that will develop new or improved technologies, processes, and products or that will apply existing technologies in new ways. The act also finds that the attraction of such jobs and



their presence in Ohio will materially contribute to the economic welfare of the people of Ohio. Accordingly, the act declares that it is the public policy of Ohio 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 this purpose.

**"Eligible research and development projects"**

(R.C. 166.01(E) and 166.17(C))

The act defines an "eligible research and development project" as an "eligible project," as defined in continuing law, 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.<sup>1</sup>

Under the act, the Director's determination 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, are conclusive for purposes of the validity and enforceability of the rights of parties arising from actions taken or agreements entered into under the Research and Development Loan Fund Program Law.<sup>2</sup>

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<sup>1</sup> Generally, an "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" does not include undertaking any of these actions if the project facilities consist solely of point-of-final-purchase retail facilities. Normally, warehouse facilities are not eligible projects, but catalog distribution facilities are. "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, including, without limitation, public capital improvements.

<sup>2</sup> "Allowable costs" mean all or part of the costs of an eligible research and development project, including costs of acquiring, constructing, reconstructing, rehabilitating, renovating, enlarging, improving, equipping, or furnishing the project; site clearance and preparation; supplementing and relocating public capital improvements or utility

## **Establishment of the Research and Development Loan Fund**

(R.C. 166.02(D), 166.20, and 166.21(F) and (G)(1) and (2); Section 3)

The act creates in the state treasury the Research and Development Loan Fund (R&D Loan Fund). The Fund consists of moneys received from the issuance of bonds or notes for research and development purposes (see "**Issuance of obligations**," below); service charges for making loans under the act; moneys received from the repayment of loans, including interest thereon, made from the Fund; money received from the sale, lease, or other disposition of property acquired or constructed with moneys in the Fund derived from the sale of obligations; any grants, gifts, or contributions of money received by the Director to be used for making loans from the Fund; and all investment earnings on the cash balance in the Fund. The R&D Loan Fund is not to be comprised, in any part, of moneys raised by taxation. All moneys in the R&D Loan Fund must be applied as provided by the Research and Development Loan Fund Program Law pursuant to appropriations made by the General Assembly.

All as and to the extent provided in bond proceedings pursuant to written directions of the Director of Development, moneys received from the repayment of loans or from the sale, lease, or other disposition of property (as described above) may be released from any other pledge and deposited to the credit of separate accounts established by the Director within the R&D Loan Fund or in the bond service fund and be pledged to the security of obligations or applied to the payment of bond service charges, without need for appropriation.<sup>3</sup> Further, the Director may establish accounts in the R&D Loan Fund for particular projects or otherwise, and may withdraw from the Fund or, subject to the bond proceedings, from any special funds or accounts in those funds, amounts of investment income required to be rebated and paid to the federal government to maintain exemption from federal income taxation of interest on obligations issued under the Economic

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*facilities; designs, plans, specifications, surveys, studies, and estimates of costs; expenses necessary or incident to determining the feasibility or practicability of assisting the project or of providing project facilities or facilities related to the project; architectural, engineering, and legal services fees and expenses; the cost 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 the project. "Allowable costs" include reimbursement of moneys advanced or applied by any governmental agency or other person for allowable costs.*

<sup>3</sup> "Bond proceedings" means the resolution, order, trust agreement, indenture, lease, or other agreement providing for the terms and conditions of obligations (R.C. 166.08(A)(1)).



Development Law, which withdrawal and payment may be made without the necessity for appropriation.

In addition, the act appropriates \$50 million in fiscal year 2004 and \$55 million in fiscal year 2005 to the R&D Loan Fund. The act requires the Director of Budget and Management to transfer the unencumbered balance of the appropriation at the end of fiscal year 2004 to fiscal year 2005. So, under the act, moneys appropriated for fiscal year 2004 that are not needed to cover liabilities incurred in that year can be transferred to fiscal year 2005.

Continuing law specifies that moneys in certain economic development funds, such as the Facilities Establishment Fund, are to be used to pay expenses and obligations incurred by the Director in administering economic development programs. The act adds the R&D Loan Fund to this list of funds from which the Director's expenses are paid.

**Issuance of obligations**

(R.C. 166.01(A), (G), and (N), 166.08(B), and 166.11)

The act authorizes the issuance of obligations by the Treasurer of State for the R&D Loan Fund, upon the certification by the Director to the Treasurer of State of the amount of moneys needed in the Fund to pay, or make loans for, allowable costs from the Fund. Under the act, profits from the sale of spirituous liquor may be used to pay bond service charges (e.g., principal and interest) on the obligations.

The obligations are issued according to procedures utilized in continuing law for the Facilities Establishment Fund, the Loan Guarantee Fund, the Innovation Ohio Loan Guarantee Fund, and the Innovation Ohio Loan Fund. The act authorizes the use of moneys in the R&D Loan Fund to pay the costs of services associated with the issuance of obligations.

**Increase in the aggregate limits on obligations, use of liquor profits, and loans**

(R.C. 166.11)

Prior law established a \$300 million limit for the aggregate principal amount of obligations that may be issued to fund economic development programs, excluding project financing obligations that do not have bond service charges paid from liquor profits and minus the amount by which 4% of the unpaid principal amount of loan repayments guaranteed under continuing law exceeds the amount in the Loan Guarantee Fund. The act increases the limit to \$500 million, and no longer requires that the 4% amount be subtracted from the limit. Thus,



under the act, an additional \$200 million aggregate principal amount of obligations may be issued to fund economic development, including obligations for the R&D Loan Fund.

Similarly, prior law established a \$25 million limit for the aggregate amount of spirituous liquor profits used in any fiscal year to back obligations issued for the Facilities Establishment Fund, Loan Guarantee Fund, Innovation Ohio Loan Guarantee Fund, and Innovation Ohio Loan Fund. The act increases the \$25 million limit to \$45 million. Thus, under the act, an additional \$20 million in spirituous liquor profits may be used to back obligations issued for economic development, including backing obligations established for the R&D Loan Fund.

Finally, prior law established a \$700 million limit on the aggregate amount of loan guarantees under the Loan Guarantee Fund and the Innovation Ohio Loan Guarantee Fund and the unpaid principal of loans made from the Facilities Establishment Fund and the Innovation Ohio Loan Fund. The act, which adds the R&D Loan Fund to this list of funds, increases the \$700 million limit to \$800 million.

**Inducements available under the Research and Development Loan Fund Program**

(R.C. 166.17(B))

To implement the Research and Development Loan Fund Program, the act permits the Director to exercise the following powers:

(1) After consultation with appropriate governmental agencies, to 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;

(2) After consultation with appropriate governmental agencies, to enter into agreements with governmental agencies to enable them to undertake the same actions as those described in paragraph (1) regarding eligible research and development projects for lease to persons engaged in industry, commerce, distribution, or research;

(3) Provide for loans from the R&D Loan Fund to finance eligible research and development projects;

(4) Subject to the release of moneys by the Controlling Board from the R&D Loan Fund, to contract for labor and materials needed for, or contract with

others, including governmental agencies, to provide, eligible research and development projects, and contract for the operation of such projects;

(5) Subject to the release of moneys by the Controlling Board from the R&D Loan Fund, 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, the 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 other person without necessity for competitive bidding and upon terms and conditions and manner of consideration under, and as the Director determines appropriate to satisfy the objectives of, the Research and Development Loan Fund Program Law;

(6) 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;

(7) Receive and accept grants, gifts, and contributions of money, property, labor, and other things of value to be held, used, and applied only for the purpose for which such grants, gifts, and contributions are made;

(8) 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;

(9) Do all other acts, enter into contracts, execute all instruments, and make all certifications necessary or appropriate to carry out the Research and Development Loan Fund Program Law;

(10) With respect to property that is the subject of or related to research and development financial assistance, take interests, including, without limitation, 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 Ohio and that products or services associated with the property are produced or, in the case of services, delivered, by persons employed within Ohio;

(11) Adopt rules as are necessary to implement any provisions of the Research and Development Loan Fund Program Law that are applicable to the Director.

**General criteria to determine eligibility for financial assistance**

(R.C. 166.19(A))

The act requires that the Director consider the following criteria 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:

- (1) The number of jobs to be created or preserved, directly or indirectly, by or in connection with the project;
- (2) Payrolls, and the taxes generated at both state and local levels, by the project and by the employment created or preserved by or in connection with it;
- (3) The project's size, nature, and cost;
- (4) The likelihood that the project will create long-term jobs in enterprises consistent with the changing economy of Ohio and the nation;
- (5) 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 enterprise by other governmental agencies through tax exemption, tax abatement, financing assistance through industrial development bonds, and otherwise, with respect to the project or with respect to any providers of research and development property that is to be included as part of the project;
- (6) The likelihood that the project will be successfully implemented.

The Director may consider the benefits to the local area, including taxes, jobs, reduced unemployment, and reduced welfare costs, that would result from particular loan arrangements or from the lease or sale of eligible research and development project facilities (e.g., buildings, equipment, and tools).

Furthermore, in making determinations about research and development financial assistance, the Director may consider the effect of an eligible research and development project upon any entity that is engaged to acquire, lease, or license research and development property in connection with the assistance.

**Development Financing Advisory Council to make recommendations on financial assistance**

(R.C. 166.19(B) and (C))

Under continuing law, the seven-member Development Financing Advisory Council (DFAC) assists the Director in carrying out economic development programs and makes recommendations to the Director regarding financial assistance. The act requires that the Director submit to the DFAC data pertinent to the general eligibility criteria set forth above, the terms of the proposed research and development financial assistance, and other relevant information that the DFAC may request. On the basis of that data, the DFAC must make recommendations as to the appropriateness of the proposed financial assistance. The DFAC may revise its recommendations to reflect any changes in the proposed financial assistance submitted by the Director. The DFAC must submit its recommendations as to the appropriateness of the proposed financial assistance to the Controlling Board.

**Private sector records not open to public inspection**

(R.C. 121.22(E) (not in the act) and 166.19(D))

The act provides that financial statements and other data submitted to the Director, the DFAC, or the Controlling Board by any private sector person in connection with research and development financial assistance, and any information taken from such a financial statement or data for any purpose, is not open to public inspection. The act permits the DFAC, in considering confidential information, to close its meeting upon the unanimous vote of all the members present, for consideration of only that information.

**Specific criteria for loans**

(R.C. 166.21(A), (B), (C), (E), and (F))

The act permits the Director, with the approval of the Controlling Board and subject to the Economic Development Law, to lend moneys in the R&D Loan Fund to persons for the purpose of paying allowable costs of an eligible research and development project, if the Director determines that all the following criteria are satisfied:

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

(2) The amount to be lent from the R&D Loan Fund will not exceed 75% of the total costs of the project;



(3) The repayment of the loan will be secured by a mortgage, lien, assignment, pledge, or other interest in property or other assets of the borrower at a level of priority and value that the Director considers necessary. In establishing the necessary security interest, the Director must take into account the value of any rights granted by the borrower to the Director to control the use of the borrower's assets under the circumstances described in the loan documents.

The Director's determinations with respect to the three criteria are conclusive for purposes of the validity of a loan commitment evidenced in a loan agreement signed by the Director.

Fees, charges, rates of interest, times of payment of interest and principal, and other terms and conditions of, and security for, loans are to be such as the Director determines to be appropriate and in furtherance of the purpose for which loans are made. The Director specifically is authorized to fix service charges for making a loan; the service charges are payable at the times and place and in the amounts and manner as the Director prescribes.

Moneys used in making loans must be disbursed from the R&D Loan Fund upon order of the Director. Unless otherwise specified in any indenture or other instrument securing a bond or note, payments of principal and interest from loans made from the Fund must be paid to the Fund and used to make loans.

The Director may take actions necessary or appropriate to collect or otherwise deal with a loan made from the R&D Loan Fund.

**Director's determination that financial assistance conforms to the law**

(R.C. 166.18(A))

The act provides that, prior to entering into each agreement to provide research and development financial assistance, the Director must determine that the assistance will conform to the Research and Development Loan Fund Program Law. The determination, and the facts upon which it is based, must be submitted to the DFAC when it considers a request for research and development financial assistance, and to the Controlling Board when it considers releasing moneys in the R&D Loan Fund. The financial assistance agreement also must set forth the determination. The determination is conclusive for purposes of the validity and enforceability of the financial assistance agreement and of any loans or other agreements entered into under the agreement.

**Notice to local authorities of relocation of an eligible research and development project**

(R.C. 166.18(B) and (C))

Under the act, when an applicant for assistance under the Research and Development Loan Fund Program requests assistance for the relocation of an eligible research and development project that is currently being operated by the applicant in another county, municipal corporation, or township in Ohio, the Director is required to provide written notification to the appropriate local governmental bodies and state officials.<sup>4</sup> The notification must contain all of the following information:

- (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 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 financial assistance is requested.

The Director must provide the written notification to the appropriate local governmental bodies and state officials so that it is received at least five days before the meeting at which the DFAC considers the request for research and development financial assistance.

**Tax credits for qualified research and development loan payments**

(R.C. 166.21(D), 5733.352, 5733.98, 5747.331, and 5747.98)

The act creates a nonrefundable research and development tax credit against the corporation franchise or income tax equal to a borrower's qualified

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<sup>4</sup> "Appropriate local governmental bodies" means the board of county commissioners of and legislative authorities of special districts in the county in which the eligible research and development project is located and of the county in which the project will be located; and the legislative authority of the municipal corporation or board of township trustees of the township in which the project for which financial assistance is requested is located and of the municipal corporation or township in which the project will be located (R.C. 166.18(C)(1)). "State officials" means the state representative and state senator in whose district the eligible research and development project for which financial assistance is requested is located and the state representative and state senator in whose district the project will be located (R.C. 166.18(C)(2)).

research and development loan payments (payments of principal and interest due on a loan from the R&D Loan Fund) made during the calendar year immediately preceding the tax year, for the franchise tax credit, or during the calendar year that includes the last day of the taxable year, for the income tax credit, for which the credit is claimed. The amount of the credit for a year cannot exceed \$150,000. The credit must be claimed in the order required under continuing law. If the credit amount exceeds the taxpayer's tax liability for the year, the excess is to be carried forward until fully used. The act makes the tax credit available in tax year 2004, under the corporation franchise tax, and in taxable year 2003, under the income tax. A borrower is eligible to receive the tax credit, regardless of whether the borrower is subject to the corporation franchise or income tax. This enables a borrower to assign the tax credit in accordance with the act (discussed below).

The act provides that, each year, the Director, upon request, may issue a certificate to a borrower of moneys from the R&D 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 or taxable year for which the certificate is issued. In addition to indicating the amount of qualified research and development loan payments made, the certificate must include a determination of the Director that, as of December 31 of the calendar year for which the certificate is issued, the borrower is not in default under the loan agreement, lease, or other instrument that governs 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 is prohibited from issuing a certificate in an amount that exceeds \$150,000. A taxpayer is not entitled to claim the research and development tax credit unless it has obtained a certificate.

A borrower entitled to a research and development tax credit may assign the credit, or a portion thereof, to any of the following:

- (1) A related member of the borrower;<sup>5</sup>

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<sup>5</sup> Generally speaking, a "related member" is a business entity (corporate or noncorporate) that substantially owns, or is substantially owned by, a corporation, either through direct ownership or through a chain of other business entities. Specifically, a related member is any of the following: (1) an individual owning at least 50% of the corporation's stock (alone or together with family members), (2) an individual's corporation, partnership, trust, or estate that, considered as a group, own at least 50% of the corporation's stock, (3) a second corporation owning at least 50% of the corporation's stock, including any third entity related to the second corporation in such a way that federal law would attribute ownership of the second corporation to that entity, or vice-versa, if federal law were modified to require a 20% rather than 5% share



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

The act requires that a borrower making an assignment notify the Director and Tax Commissioner, in such form as the Tax Commissioner prescribes, before the credit that was assigned is used. An 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.

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, or, under the state income tax, a shareholder in an S corporation, the taxpayer must be allowed the taxpayer's distributive or proportionate share of the credit available through the partnership, limited liability company, or S corporation.

The aggregate tax credit that may be claimed under the corporation franchise tax law and the income tax law by a borrower as a result of qualified research and development loan payments attributable during a calendar year to any one loan cannot exceed \$150,000.

### **Ohio Research Commercialization Grant Program**

(R.C. 184.04)

The act creates the Ohio Research Commercialization Grant Program 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 their competitiveness through augmentation of federal research and development funding. The act provides for the awarding of research commercialization grants to small businesses that are receiving or are eligible to receive funding under federal programs.

The act requires the Third Frontier Commission, which is composed of the Director of Development, the Chancellor of the Ohio Board of Regents, and the Governor's Science and Technology Advisor, to award research commercialization grants to eligible recipients on a competitive basis, for the following purposes:

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*ownership threshold, or (4) a second corporation related to the corporation through the common ownership or control of each corporation's stock through one or more other corporations (with 80% stock ownership generally constituting ownership or control).*



(1) Commercialization of a core competency technology, which includes, without limitation, 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.

To be eligible for a research commercialization grant, a business must demonstrate to the Third Frontier Commission that it is located in Ohio and has received a Phase I award of funds (used to determine the feasibility of experimental or theoretical research) under the federal Small Business Innovation Research Program, federal Small Business Technology Transfer Program, or a similar award of federal funds under a program designated by the Commission as making an applicant eligible for a grant. Alternatively, an applicant that is located in Ohio, but has not yet received an award of federal funds, is eligible to receive an award under the Grant Program if the applicant demonstrates eligibility for an award under the federal Advanced Technology Program or a similar federal program designated by the Commission as making an applicant eligible for a grant.

The act provides that an eligible applicant that receives a research commercialization grant is not precluded from being considered for or participating in other financial assistance programs offered by the Department of Development.

The Third Frontier Commission is required to review proposals from applicants that meet the act's eligibility requirements, and may issue commitments to applicants for conditional grants of funds, conditioned on the applicant receiving a Phase II award of funds (an expansion of Phase I funding, typically used for building prototypes) under the federal Small Business Innovation Research Program or the federal 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." No funds may be disbursed under the Research Commercialization Grant Program until the 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 one of those programs.

The act requires that the Third Frontier Commission adopt rules under the Administrative Procedure Act establishing all of the following:

(1) Forms and procedures by which eligible applicants may apply for grants under the Research Commercialization Grant Program;

- (2) Criteria for reviewing, evaluating, ranking, and approving applications from eligible applicants that best serve the goals of the Program;
- (3) Reporting requirements and monitoring procedures;
- (4) The types of federal awards and programs that make an applicant eligible for a grant;
- (5) Any other rules necessary to implement and administer the Program.

### **Technology investment tax credits**

#### **Eligibility requirements for investors broadened**

(R.C. 122.151(A), (D), and (E) and 122.152(A))

An investor who wants to make an investment in a qualified technology-based business must apply to an Edison Center for a tax credit that is equal to 25% of the amount of the investment.<sup>6</sup> The investor is eligible for a tax credit if nine requirements are met, one of which is that the business in which the investor is investing had less than \$1 million of gross revenue in its most recently completed fiscal year or had a net book value of less than \$1 million at the end of that fiscal year. The act increases the gross revenue and net book value amounts from less than \$1 million to less than \$2.5 million.

After reviewing the application and determining whether all of the eligibility requirements are met, the Edison Center makes an initial determination to the Industrial Technology and Enterprise Advisory Council (ITEAC) as to whether the investor should be approved for the credit. A three-person committee within ITEAC reviews the proposed investment and makes a final determination as to whether the investor may receive the credit. Under prior law, the amount invested for which a technology investment tax credit may be claimed could not exceed \$150,000. The act increases this to \$250,000 for most investments. If, however, the investment is made in a business certified by the Director of Administrative Services as an "EDGE Business Enterprise"<sup>7</sup> or in an Ohio entity

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<sup>6</sup> *An Edison Center is an entity that receives funding through the Thomas Alva Edison Grant Program, which provides grants to nonprofit organizations, colleges, and universities to fund technology-based research and development.*

<sup>7</sup> *"EDGE" is an acronym for Encouraging Diversity, Growth, and Equity, a program created in 2002 by the Governor's Executive Order 2002-17T. An EDGE Business Enterprise is a business that is economically disadvantaged based on the size of the business and the wealth of its owner or owners, and socially disadvantaged because the owner or owners are members of a minority group or are personally disadvantaged*

located in a distressed area,<sup>8</sup> the maximum amount for which a technology investment tax credit may be claimed cannot exceed \$300,000.

Prior law provided that the committee could not approve more than \$1 million of investments in any one Ohio business. The act increases this amount to \$1.5 million. Similarly, prior law prohibited issuing more than \$10 million in technology investment tax credits. The act increases this amount to \$20 million.

Under prior law, if an investor invested less than \$150,000 in an Ohio business, the investor could apply for approval of another investment in the same business, as long as the total amount invested in the business did not exceed \$150,000. The act increases these two amounts to \$250,000, and to \$300,000 for investments in EDGE Business Enterprises or in an Ohio entity located in a distressed area.

Finally, the act provides that those who invest in a qualified technology-based business that is an EDGE Business Enterprise or an Ohio entity located in a distressed area may claim a tax credit that is equal to 30% of the amount of the investment, rather than the 25% credit that is available under the act for investments in non-EDGE businesses or, presumably, in Ohio entities in non-distressed areas.

**Issuance of applications for, form of, and signatures required on, tax credit certificates**

(R.C. 122.152(A) and (G))

Under prior law, after the three-person committee approved an investment, the investor could apply to the full ITEAC for a tax credit certificate. The ITEAC

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*because they are women, physically disabled, or suffer from some other personal disadvantage. Certified EDGE Business Enterprises are eligible for contract assistance, financial and bonding assistance, management and technical assistance, and mentoring opportunities from the Department of Administrative Services and the Department of Development. The EDGE Program has been codified in Am. Sub. H.B. 95 of the 125th General Assembly, the main operating budget for fiscal years 2004 and 2005. (R.C. 122.15(L).)*

<sup>8</sup> *Continuing law defines a "distressed area" as a county of less than 125,000 in population that meets two of the following criteria: (1) its average unemployment rate is equal to 125% of the U.S. average unemployment rate, (2) its per capita income is equal to or below 80% of the median county per capita income of the U.S., or (3) in intercensal years, the county has a ratio of transfer payment income to total county income equal to or greater than 25% (R.C. 122.23(A)). (R.C. 122.15(M).)*



issued the certificate if it was satisfied that the investor made the investment in the proper form. Under the act, the three-person committee, not the ITEAC, issues the certificate if it is satisfied the investor has made the investment in the proper form.

The act adds the requirement that the Director of Development and the chairperson of the committee sign the tax credit certificate.

Prior law required that the ITEAC develop the form of the technology investment tax credit certificate. The act transfers this responsibility to the Director. The act provides, specifically, that the Director must develop the certificate's form and that the committee must use that form when issuing the certificates.

Prior law also made the ITEAC responsible for reporting to the Tax Commissioner any information requested by the Commissioner concerning the tax credit certificates. Here again, the act transfers this responsibility to the Director.

### **Innovation Ohio Loan Fund Program**

#### **Changes to the Fund and an appropriation to it**

(R.C. 166.16(D) and (G); Sections 4 to 6)

Under prior law, the Innovation Ohio Loan Fund was a special revenue fund and a trust fund that was in the custody of the Treasurer of State, but was separate and apart from the state treasury. The Treasurer of State served as an agent for the Director of Development in making deposits to and withdrawals from the Fund, and could withdraw amounts of income required to be rebated and paid to the federal government to maintain any exemption from federal taxation of interest on obligations issued. Income from the investment of moneys in the Fund had to be credited to it, and, as provided in bond proceedings, to particular accounts in the Fund.

The act moves the Innovation Ohio Loan Fund to the state treasury, and requires that all investment earnings on the cash balance in the Fund be credited to it, rather than requiring that the income from investment of moneys in the Fund be credited to it and particular accounts in it. The act eliminates the requirement that the Treasurer of State serve as an agent for the Director because the Fund is being moved into the state treasury. The act also provides that the Director is the person who may withdraw investment income from the Fund to maintain federal tax exemptions.

The act makes an appropriation of \$50 million for fiscal year 2003 to the Innovation Ohio Loan Fund for loans and loan guarantees.

### **Corrections to the laws governing the Program**

(R.C. 166.13 and 166.14)

Prior law governing the Innovation Ohio Loan Fund Program mistakenly referred to the Development Financing Advisory Council as the "Development Finance Advisory Council." The act corrects these incorrect references and other grammatical errors in that law.

### **Job retention tax credits**

The act makes certain changes with respect to the job retention tax credit and also creates a new tax credit for certain corporations that operate call centers and are receiving the job retention tax credit.

### **Changes to the job retention tax credit**

(R.C. 122.171)

Under continuing law, Ohio's Tax Credit Authority may enter into agreements with employers whereby the employer undertakes the retention of Ohio jobs in exchange for tax credits against the corporation franchise or income tax. Under prior law, the term of a tax credit issued by the Tax Credit Authority could not exceed ten years. The act extends the maximum term of the credit from ten to 15 years.

The act also alters the employment requirements that make a taxpayer eligible for the job retention tax credit. Under continuing law, the agreement between the Tax Credit Authority and an employer for a job retention tax credit must include a requirement that the taxpayer retain a specified number of full-time employment positions for the term of the credit, including a requirement that the taxpayer continue to employ at least 1,000 employees in full-time positions at a designated site. If a taxpayer satisfies this and other conditions in the agreement, the Director of Development issues the taxpayer a tax credit certificate demonstrating the taxpayer's eligibility for the credit and specifying the amount of the credit to which the taxpayer is entitled. (The taxpayer must submit the certificate to the Tax Commissioner when claiming the credit.) The Director cannot issue a certificate for any year in which the total number of full-time employment positions for each day of the calendar year divided by 365 is less than 90% of the employment positions required to be retained under the taxpayer's agreement with the Tax Credit Authority. Thus, a taxpayer is ineligible for a credit if the taxpayer retains less than 90% of the positions that the taxpayer is required to retain under the agreement with the Tax Credit Authority. The act creates an exception to the 90% retention requirement. Under the act, the 90%



retention requirement does not apply if the Tax Credit Authority, in a resolution and in the agreement, authorizes a lower retention rate for the taxpayer.

**Call center tax credit to offset future "anti-PIC" legislation**

(R.C. 122.171)

The act authorizes a new, nonrefundable tax credit for any corporation operating a call center and also qualifying for the existing "job retention" tax credit. The new credit is designed to offset any additional tax liability that a call center might incur under any future change in the law that requires corporations to more fully reflect intercompany transactions in reporting their taxable income. The credit also is available to companies that are related to the corporation through 20% or more stock ownership or control.

For a corporation or its related companies to qualify for the new credit, the corporation must satisfy the definition of an "applicable corporation." An "applicable corporation" is defined by five criteria:

(1) 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.

(2) Sales and licensing of software generated at least \$600 million in revenue during the taxable year immediately preceding the tax year the corporation is first entitled to claim the job retention tax credit.

(3) For the entire taxable year immediately preceding the tax year, the corporation, or one or more of its related companies, 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 companies together have a daily average, based on a 365-day year, of at least 500,000 "successful customer contacts" through one or more of their contact centers (which need not be located in Ohio). A successful customer contact is 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.

(5) The corporation is eligible for the job retention tax credit for the same tax year.

The corporation must claim the credit against the corporation franchise tax. The amount of the credit equals the "applicable difference," which is the tax increase, if any, that would result from any future change in the law that now



requires corporations, in computing their taxable income, to reflect certain transactions with related companies. Currently, that law requires corporations to add interest and certain intangibles-related expenses paid to related companies (e.g., royalties and "technical" fees). For example, if the law were to be expanded in the future to require such an add-back for other kinds of expenses, the act allows an "applicable corporation" and its related companies to claim the new credit for an amount that entirely offsets the additional tax resulting from the add-back--but only if the corporation also qualifies for the job retention tax credit in the same year.

**Addition of a provision**

The changes to the job retention tax credit and the new call center tax credit described above are also contained in Am. Sub. H.B. 95, the operating budget for fiscal years 2004 and 2005. The act adds to these provisions an additional provision that is not in Am. Sub. H.B. 95. It permits the Tax Credit Authority to include a call center tax credit in any agreement between itself and a taxpayer that is eligible for both the job retention tax credit and the call center credit.

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**HISTORY**

ACTION	DATE	JOURNAL ENTRY
Introduced	01-23-03	p. 64
Reported, H. Economic Development & Technology	06-24-03	p. 945
Passed House (95-4)	06-24-03	pp. 948-951
Passed Senate (33-0)	06-25-03	pp. 880-882

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