



**Sub. H.B. 1\***

125th General Assembly

(As Reported by H. Economic Development & Technology)

**Rep. T. Patton**

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**BILL 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 bill to finance eligible research and development projects.
- Permits the Treasurer of State to issue obligations to pay allowable costs or make loans for eligible research and development projects under the Program.
- 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 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

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*\* This analysis was prepared before the report of the House Economic Development and Technology Committee appeared in the House Journal. Note that the list of co-sponsors and the legislative history may be incomplete.*

or governmental agencies without competitive bidding, and upon whatever terms and conditions and in whatever manner the Director considers necessary.

- 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, 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 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 from \$700 million to \$800 million, and adds the unpaid principal of loans made from the R&D Loan Fund.
- Appropriates \$50 million in fiscal year 2004 and \$55 million in fiscal year 2005 to 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 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 Edison Program.
- Increases the number of businesses in which investments may be made by raising the businesses' gross revenue or net book value eligibility requirements, from \$1 million to \$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.
- Increases the amount of the technology investment tax credit that may be claimed by an investor in an EDGE Business Enterprise from 25% of the amount of the investment to 30%.
- Requires that the Director of Development develop the form of, and 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**

- Adds provisions to the bill increasing the maximum term of the job retention tax credit, changing the job retention requirements for the job retention tax credit, and creating a new tax credit for certain corporations that operate call centers and that are receiving the job retention tax credit, all of which are contained in Am. Sub. H.B. 95 of the 125th General Assembly, and adds a provision permitting the Tax Credit Authority to include the new call center tax credit in a job retention tax credit agreement, which was a provision omitted from Am. Sub. H.B. 95.

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## CONTENT AND OPERATION

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

#### **Program overview**

The bill establishes the Research and Development Loan Fund Program, to be administered by the Director of Development. The Program is operated in a manner that is similar to the existing Facilities Establishment Fund Program and Innovation Ohio Loan Fund Program. Assistance is available under the Program for any research and development project involving the discovery of information that is technological in nature and used to develop new or improved products or processes.

The Program is funded through the Research and Development Loan Fund created by the bill. The Fund receives moneys from the proceeds of bond or note sales that are repaid with liquor profits and loan payments made by Program borrowers.<sup>1</sup>

The Program offers "research and development financial assistance," which includes various inducements that the bill makes available to the Director to

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<sup>1</sup> Section 13, Article VIII of the Ohio Constitution authorizes the state to issue bonds or other obligations, and to make or guarantee loans for economic development, if the purposes are consistent with that section.

stimulate research and development, including loans from the Fund and tax credits for qualified payments made on these loans.

The bill permits the Director to enter into agreements to induce persons engaged in industry, commerce, distribution, or research to acquire or develop eligible research and development projects. The bill authorizes the Director to provide persons with research and development financial assistance to pay the allowable costs of these projects, including, for example, the costs of acquiring and preparing project facilities (e.g., buildings, structures, and equipment). Allowable costs also include the costs of site clearance, surveys, and studies.

To attract persons that do not wish to own research and development projects, the bill authorizes governmental agencies to acquire, construct, or develop eligible research and development projects for lease to those persons. A more detailed discussion of the Program's elements follows.

Under the bill, the Program takes effect immediately, but the tax credits commence in tax year 2004, under the corporation franchise tax, or taxable year 2003, under the income tax.

**Legislative declaration of intent**

(R.C. 166.17(A))

The bill has a legislative declaration of intent, which generally states that in order to enhance the economic opportunities available to and improve the economic welfare of all of the people of the state, and to maintain the competitiveness of the Ohio economy, it is necessary to provide incentives to ensure that Ohioans have access to high-value technology jobs and to businesses that will develop new technologies or that will apply existing technologies in new ways. The bill also includes in the legislative declaration that the attraction of such jobs will materially contribute to the economic welfare of the people of the state. Accordingly, the bill provides that it is the public policy of the state 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 bill defines an "eligible research and development project" as an "eligible project," as defined in existing law, including "project facilities" (see **COMMENT**) comprising, within, or related to a facility or portion of a facility at which research is undertaken for the purpose of discovering technological

information that will 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.

Under the bill, 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 are conclusive for purposes of the validity and enforceability of the rights of any parties, with respect to actions taken or agreements entered into under the Research and Development Loan Fund Program laws.

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

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

The bill creates in the state treasury the Research and Development Loan Fund (R&D Loan Fund). The Fund consists of any grants, gifts, and contributions of money or rights to money designated for and transferred to it. It also consists of moneys received from the issuance of bonds or notes for research and development purposes (see **'Issuance of obligations,'** below), service charges imposed under the bill, and all investment earnings on the cash balance in the Fund. The R&D Loan Fund is not comprised, in any part, of moneys raised by taxation. The bill specifies that all moneys in the R&D Loan Fund must be applied as provided by the laws governing the Research and Development Loan Fund Program pursuant to appropriations made by the General Assembly.

In addition, the bill appropriates \$50 million in fiscal year 2004 and \$55 million in fiscal year 2005 to the R&D Loan Fund. The bill 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 bill, moneys appropriated for fiscal year 2004 that are not needed to cover liabilities incurred in fiscal year 2004 can be transferred to fiscal year 2005.

Furthermore, the bill requires that the following be credited to the R&D Loan Fund:

- (1) Moneys received from the repayment of loans made from the Fund;
- (2) Moneys received from the sale, lease, or other disposition of property acquired or constructed from Fund moneys derived from the sale of obligations.

The bond proceedings may provide that the money referred to in (1) and (2) above be deposited to the credit of separate accounts established by the Director of Development 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>2</sup> Further, the Director may establish accounts in the R&D Loan Fund for particular projects, 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 development law, which withdrawal and payment may be made without the necessity for appropriation.

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 bill 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, 166.08, and 166.11)

The bill 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 the amount of moneys needed in the Fund to pay, or make loans for, allowable costs from the Fund. Under the bill, profits from the sale of 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 bill 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)

Current law establishes 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

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<sup>2</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)).



amount in the Loan Guarantee Fund. The bill increases the limit to \$500 million, and no longer requires that the 4% amount be subtracted from the limit.

Similarly, current law establishes a \$25 million limit for the aggregate amount of liquor sale 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 bill, which adds the R&D Loan Fund to this list of funds, increases the \$25 million limit to \$45 million. Thus, under the bill, an additional \$20 million in liquor profits may be used to back obligations issued for economic development.

Finally, current law establishes 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 bill, 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 bill 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 in (1) regarding eligible research and development projects and lease them to persons engaged in industry, commerce, distribution, or research;

(3) Provide for loans from the R&D Loan Fund to finance such 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 eligible research and development projects and for the operation of such projects, and to contract to acquire or convey property without competitive bidding and upon such terms and consideration as the Director considers appropriate;

(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 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 the Research and Development Loan Fund Program Law;

(9) Adopt rules to implement any provisions of the Program Law applicable to the Director.

**Director may ensure that property associated with research and development financial assistance benefits Ohio**

(R.C. 166.17(B)(9))

Under the bill, the Director is permitted to take an interest in property associated with research and development financial assistance by mortgage, security interest, leasehold interest, assignment, or exclusive or non-exclusive license, to ensure that the property is used in Ohio, and the products associated with the property are produced, and services associated with the property are delivered, by persons employed in Ohio.

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

(R.C. 166.01(N) and 166.19(A))

The bill 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 the project;

(2) Payrolls, and the taxes generated at both the state and local levels, by the project and by the employment created or preserved by 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 the state and nation;

(5) The needs of any private sector enterprise to be assisted, taking into account the amount and kind of assistance, if any, to be provided to the enterprise by other governmental agencies through tax exemption, tax abatement, or financing assistance through industrial development bonds;

(6) The likelihood that the project will be successfully implemented.

The Director may consider the benefits to the local area 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). In considering the benefits to a local area, the Director may examine taxes, jobs, reduced unemployment, and reduced welfare costs.

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.

#### **Development Financing Advisory Council to make recommendations**

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

Under continuing law, the seven-member Development Financing Council (DFAC) assists the Director in carrying out economic development programs and makes recommendations to the Director regarding financial assistance. The bill 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 DFAC may request. On the basis of that data, DFAC must make recommendations as to the appropriateness of the proposed financial assistance. DFAC may revise its recommendations to reflect any changes in the proposed assistance submitted by the Director. 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 bill) and 166.19(D))

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

**Specific criteria for loans**

(R.C. 166.21)

The bill permits the Director, with the approval of the Controlling Board, 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 of 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 eligible 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 appropriate.

In establishing an appropriate security interest under (3) above, 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 these three criteria are conclusive for purposes of the validity of a loan commitment memorialized in a loan agreement signed by the Director.

The bill authorizes the Director to fix charges, fees, rates of interest, times of payment of interest and principal, and other terms and conditions of, and security for, the loans. 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) and 166.19(B) and (C))

The bill provides that, prior to entering into each agreement to provide research and development financial assistance, the Director must set forth a determination, and the facts upon which it is based, that the assistance conforms to the laws governing the Research and Development Loan Fund Program. This determination must be in the agreement to provide financial assistance and also must be submitted to 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 Director's determination that research and development financial assistance conforms to the requirements of the law governing the Program is conclusive for purposes of the validity and enforceability of the loan and financial assistance agreement.

**Relocation of an eligible research and development project**

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

The bill permits an applicant for assistance under the Research and Development Loan Fund Program to request that the assistance provide 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. Relocation of the project triggers a notice requirement. Under the bill, the Director is required to provide written notification to the appropriate local governmental bodies and state officials.<sup>3</sup>

The notification must contain all of the following information:

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

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<sup>3</sup> "Appropriate local governmental bodies" means the board of county commissioners of 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)).

(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 notification is received at least five days before the meeting at which 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 bill creates a nonrefundable research and development tax credit against the corporation franchise or income tax for a borrower's qualified 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 by existing law. If the credit amount exceeds the taxpayer's tax liability for the year, the excess may be carried forward until fully used. The bill 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 bill (discussed below).

The bill provides that, each year, the Director 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 taxable or tax 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. No taxpayer is entitled to claim the tax credit unless it has obtained a certificate.

A borrower entitled to a tax credit may assign the credit or a portion of it to any of the following:

- (1) A related member of the borrower;<sup>4</sup>
- (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 bill 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 bill creates the Ohio Research Commercialization Grant Program to improve the commercial viability of research projects by making small technology

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<sup>4</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 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).*



companies better able to assess their commercial potential and the commercial potential of research projects, and by promoting their competitiveness through federal research and development funding. The bill provides for the awarding of grants to small businesses that are already receiving funding under federal programs. The Program takes effect immediately upon the bill's effective date.

The bill requires the Third Frontier Commission, which is composed of the Director of Development, Chancellor of the Ohio Board of Regents, and the Governor's science and technology advisor, to award grants under the Grant Program on a competitive basis, for the following purposes:

(1) Commercialization of a core competency technology, which includes 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 grant under the Grant Program, 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 federal program designated by the Commission as making an applicant eligible for a grant.

The bill provides that an eligible applicant that receives a grant under the Grant Program is not precluded from 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 bill's requirements, and may issue commitments to applicants for conditional grants of state 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 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 Commission. No funds may be disbursed under the 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 bill 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 Grant Program;

(2) Criteria for reviewing, evaluating, ranking, and approving applications from 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 Grant Program.

### **Technology investment tax credits**

#### **Eligibility requirements for investors broadened and number of technology investments eligible for a tax credit increased**

(R.C. 122.151(A) to (E))

Under continuing law, 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>5</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 the most recent fiscal year or had a net book value of less than \$1 million at the end of that fiscal year. 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 or not the investor may receive the credit. Currently, the amount invested for which a technology investment tax credit may be claimed cannot exceed \$150,000. The bill increases this to

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<sup>5</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.*

\$250,000 for most investments. In addition, under the bill, if the investment is made in business certified by the Director of Administrative Services as an "EDGE Business Enterprise," the maximum amount for which a technology investment tax credit may be claimed cannot exceed \$300,000.<sup>6</sup> The bill also increases the number of businesses in which an investor may invest by increasing gross revenue and net book value amounts from \$1 million to \$2.5 million.

Current law provides that the committee may not approve more than \$1 million of investments in any one Ohio business. The bill increases this amount to \$1.5 million. Similarly, current law prohibits issuing more than \$10 million in technology investment tax credits. The bill increases this amount to \$20 million.

Currently, if an investor invests less than \$150,000 in an Ohio business, the investor may apply for approval of another investment in the same business, as long as the total amount invested in the business does not exceed \$150,000. The bill increases these two amounts to \$250,000 and to \$300,000 for investments in EDGE Business Enterprises.

All of the increases take effect immediately on the bill's effective date.

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

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

Under current law, after the three-person committee approves an investment, the investor may apply to the full ITEAC for a tax credit certificate. The ITEAC issues the certificate if it is satisfied that the investor has made the investment in the proper form. Under the bill, the three-person committee, not the ITEAC, issues the certificate if it is satisfied the investor has made the investment in the proper form.

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<sup>6</sup> "EDGE" is an acronym for Encouraging Diversity, Growth, and Equity, which is a program created in 2002 by the Governor's executive order 2002-17T. EDGE Business Enterprises are businesses that are 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 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 Sub. H.B. 95 of the 125th General Assembly, the main operating budget for fiscal years 2004 and 2005.

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

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

Current law also makes the ITEAC responsible for reporting to the Tax Commissioner any information requested by the Commissioner concerning the tax credit certificates. Here again, the bill 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 3 to 6)

Under current law, the Innovation Ohio Loan Fund is a special revenue fund and a trust fund that is in the custody of the Treasurer of State, but is separate and apart from the state treasury. The Treasurer of State serves as an agent for the Director of Development in making deposits to and withdrawals from the Fund, and may 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 must be credited to it, and, as may be provided in bond proceedings, to particular accounts in the Fund.

The bill 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 bill eliminates the requirement that the Treasurer of State serve as an agent for the Director, since the Fund is being moved into the state treasury. The bill also provides that the Director is the person who may withdraw investment income from the Fund to maintain federal tax exemptions. These changes take effect immediately on the bill's effective date.

The bill makes an appropriation of \$50 million to the Innovation Ohio Loan Fund for loans and loan guarantees. The appropriation takes effect immediately.

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

(R.C. 166.13, 166.14, and 166.16)

Current law governing the Innovation Ohio Loan Fund Program mistakenly refers to the Development Financing Advisory Council as the "Development Finance Advisory Council." The bill changes these incorrect references and other grammatical errors in that law.

### **Job retention tax credits**

The bill 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. These provisions are also contained in Am. Sub. H.B. 95 of the 125th General Assembly. However, the bill adds a provision that was omitted from that bill.

### **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 corporate franchise and personal income taxes. Under current law, the term of a tax credit issued by the Tax Credit Authority may not exceed ten years. The bill extends the maximum term of the credit from ten to 15 years.

The bill also alters the employment requirements that make a taxpayer eligible for the job retention tax credit. Under current 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 one thousand 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.) Current law prohibits the Director from issuing 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, under current law, 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 bill creates an exception to the 90% retention requirement. Under the bill, 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 bill 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) 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) 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."

(4) The corporation and its related companies together have a daily average of at least 500,000 "successful customer contacts" through one or more contact centers (which need not be located in Ohio). A successful customer contact is defined as "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 (as was proposed in the introduced version of the bill), the bill 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.

The bill also increases the maximum term of the existing job retention tax credit, from ten to 15 years.

**Addition of a provision omitted from Am. Sub. H.B. 95**

As noted, the changes to the job retention tax credit and the new call center tax credit described above are provisions that are also contained in Am. Sub. H.B. 95. The bill adds to these provisions an additional provision that was omitted from Am. Sub. H.B. 95. Specifically, the bill permits the Tax Credit Authority to include a call center tax credit in any agreement between itself and a taxpayer eligible for both the job retention tax credit and the call center credit.

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## COMMENT

Generally, an "eligible project" means project facilities (building, structures, equipment, and other property) to be acquired, established, expanded, remodeled, rehabilitated, or modernized for industry, commerce, distribution, or research, the operation of which 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.

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## HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced Reported, H. Economic	1-23-03	p. 64



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