

As Recommended to the Senate Energy Committee

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Representatives Click, Deeter

Cosponsors: Representatives Pizzulli, Thomas, D., Salvo, Daniels, Workman, Mathews, T., Richardson, Stephens, Newman, Barhorst, Williams, Brennan, King, Plummer, Ghanbari, Hall, T., Lorenz, Gross, Bird, Manning, Stewart, Holmes, Miller, M., Abdullahi, Claggett, Creech, Dovilla, Hoops, John, Klopfenstein, Lear, Mathews, A., Miller, J., Miller, K., Mohamed, Peterson, Ray, Robb Blasdel, Rogers, Schmidt, Synenberg, Troy, Upchurch, White, A., Willis, Young

To amend sections 122.17, 122.175, and 3745.015 and 1
to enact sections 122.55, 149.437, 1521.301, 2
1521.302, 1521.303, 4582.432, 4941.01, 4941.02, 3
4941.03, 4941.04, 4941.05, 4941.06, 5709.94, and 4
6111.70 of the Revised Code regarding data 5
centers. 6

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

Section 1. That sections 122.17, 122.175, and 3745.015 be 7
amended and sections 122.55, 149.437, 1521.301, 1521.302, 8
1521.303, 4582.432, 4941.01, 4941.02, 4941.03, 4941.04, 4941.05, 9
4941.06, 5709.94, and 6111.70 of the Revised Code be enacted to 10
read as follows: 11

Sec. 122.17. (A) As used in this section: 12

(1) "Payroll" means the total taxable income paid by the 13
employer during the employer's taxable year, or during the 14
calendar year that includes the employer's tax period, to each 15
employee or each home-based employee employed in the project to 16

the extent such payroll is not used to determine the credit 17
under section 122.171 of the Revised Code. "Payroll" excludes 18
amounts paid before the day the taxpayer becomes eligible for 19
the credit and retirement or other benefits paid or contributed 20
by the employer to or on behalf of employees. 21

(2) "Baseline payroll" means Ohio employee payroll, except 22
that the applicable measurement period is the twelve months 23
immediately preceding the date the tax credit authority approves 24
the taxpayer's application or the date the tax credit authority 25
receives the recommendation described in division (C) (2) (a) of 26
this section, whichever occurs first, multiplied by the sum of 27
one plus an annual pay increase factor to be determined by the 28
tax credit authority. 29

(3) "Ohio employee payroll" means the amount of 30
compensation used to determine the withholding obligations in 31
division (A) of section 5747.06 of the Revised Code and paid by 32
the employer during the employer's taxable year, or during the 33
calendar year that includes the employer's tax period, to the 34
following: 35

(a) An employee employed in the project who is a resident 36
of this state including a qualifying work-from-home employee not 37
designated as a home-based employee by an applicant under 38
division (C) (1) of this section; 39

(b) An employee employed at the project location who is 40
not a resident and whose compensation is not exempt from the tax 41
imposed under section 5747.02 of the Revised Code pursuant to a 42
reciprocity agreement with another state under division (A) (3) 43
of section 5747.05 of the Revised Code; 44

(c) A home-based employee employed in the project. 45

"Ohio employee payroll" excludes any such compensation to 46
the extent it is used to determine the credit under section 47
122.171 of the Revised Code, and excludes amounts paid before 48
the day the taxpayer becomes eligible for the credit under this 49
section. 50

(4) "Excess payroll" means Ohio employee payroll minus 51
baseline payroll. 52

(5) "Home-based employee" means an employee whose services 53
are performed primarily from the employee's residence in this 54
state exclusively for the benefit of the project and whose rate 55
of pay is at least one hundred thirty-one per cent of the 56
federal minimum wage under 29 U.S.C. 206. 57

(6) "Full-time equivalent employees" means the quotient 58
obtained by dividing the total number of hours for which 59
employees were compensated for employment in the project by two 60
thousand eighty. "Full-time equivalent employees" excludes hours 61
that are counted for a credit under section 122.171 of the 62
Revised Code. 63

(7) "Metric evaluation date" means the date by which the 64
taxpayer must meet all of the commitments included in the 65
agreement. 66

(8) "Qualifying work-from-home employee" means an employee 67
who is a resident of this state and whose services are 68
supervised from the employer's project location and performed 69
primarily from a residence of the employee located in this 70
state. 71

(9) "Resident" or "resident of this state" means an 72
individual who is a resident as defined in section 5747.01 of 73
the Revised Code. 74

(10) "Reporting period" means a period corresponding to	75
the annual report required under division (D) (6) of this	76
section.	77
(11) "Megaproject" means a project in this state that	78
meets all of the following requirements:	79
(a) At least one of the following applies:	80
(i) The project requires unique sites, extremely robust	81
utility service, and a technically skilled workforce <u>and does</u>	82
<u>not involve the acquisition, construction, renovation,</u>	83
<u>expansion, replacement, or repair of a data center.</u>	84
(ii) The megaproject operator of the project has its	85
corporate headquarters in the United States, incurs more than	86
fifty per cent of its research and development expenses in the	87
United States in the year preceding the date the tax credit	88
authority approves the project for a credit under this section,	89
and builds and operates semiconductor wafer manufacturing	90
factories in this state or intends to do so by the metric	91
evaluation date applicable to the megaproject operator.	92
(b) The megaproject operator of the project agrees, in an	93
agreement with the tax credit authority under division (D) of	94
this section, that, on and after the metric evaluation date	95
applicable to the megaproject operator and until the end of the	96
last year for which the megaproject qualifies for the credit	97
authorized under this section, the megaproject operator will	98
compensate the project's employees at an average hourly wage of	99
at least three hundred per cent of the federal minimum wage	100
under 29 U.S.C. 206, exclusive of employee benefits, as	101
determined at the time the tax credit authority approves the	102
project for a credit under this section.	103

(c) The megaproject operator agrees, in an agreement with the tax credit authority under division (D) of this section, to satisfy either of the following by the metric evaluation date applicable to the project:

(i) The megaproject operator makes at least one billion dollars, as adjusted under division (V)(1) of this section, in fixed-asset investments in the project.

(ii) The megaproject operator creates at least seventy-five million dollars, as adjusted under division (V)(1) of this section, in Ohio employee payroll at the project.

(d) The megaproject operator agrees, in an agreement with the tax credit authority under division (D) of this section, that if the project satisfies division (A)(11)(c)(ii) of this section, then, on and after the metric evaluation date and until the end of the last year for which the megaproject qualifies for the credit authorized under this section, the megaproject operator will maintain at least the amount in Ohio employee payroll at the project required under that division for each year in that period.

(12) "Megaproject operator" means a taxpayer that, separately or collectively with other taxpayers, undertakes and operates a megaproject. Such a taxpayer becomes a megaproject operator effective the first day of the calendar year in which the taxpayer and the tax credit authority enter into an agreement under division (D) of this section with respect to the megaproject. More than one taxpayer may be designated by the tax credit authority as a megaproject operator for the same megaproject.

(13) "Megaproject supplier" means a supplier in this state

that meets either or both of the following requirements:	133
(a) The supplier sells tangible personal property directly	134
to a megaproject operator of a megaproject that satisfies the	135
criteria described in division (A) (11) (a) (ii) of this section	136
for use at a megaproject site, provided that such property was	137
subject to substantial manufacturing, assembly, or processing in	138
this state at a facility owned or operated by the supplier;	139
(b) The supplier <u>is not a data center and</u> sells tangible	140
personal property directly to a megaproject operator for use at	141
a megaproject site, provided that the supplier agrees, in an	142
agreement with the tax credit authority under division (D) of	143
this section, to meet all of the following requirements:	144
(i) By the metric evaluation date applicable to the	145
supplier, makes at least one hundred million dollars, as	146
adjusted under division (V) (2) of this section, in fixed-asset	147
investments in this state;	148
(ii) By the metric evaluation date applicable to the	149
supplier, creates at least ten million dollars, as adjusted	150
under division (V) (2) of this section, in Ohio employee payroll;	151
(iii) On and after the metric evaluation date applicable	152
to the supplier, until the end of the last year for which the	153
supplier qualifies for the credit authorized under this section,	154
maintains at least the amount in Ohio employee payroll required	155
under division (A) (13) (b) (ii) of this section for each year in	156
that period.	157
(14) <u>"Data center" means one or more buildings or physical</u>	158
<u>facilities or infrastructure, located on a single real property</u>	159
<u>parcel or on contiguous, adjacent, or otherwise aggregated real</u>	160
<u>property parcels that are used primarily or exclusively for</u>	161

digital information services such as the management, storage, 162
processing, and dissemination of electronic data and information 163
through the use of computer systems, servers, networking 164
equipment, and related components, including equipment cooling 165
systems, or virtual currency mining. 166

(B) The tax credit authority may make grants under this 167
section to foster job creation in this state. Such a grant shall 168
take the form of a refundable credit allowed against the tax 169
imposed by section 5725.18, 5726.02, 5729.03, 5733.06, 5736.02, 170
or 5747.02 or levied under Chapter 5751. of the Revised Code. 171
The credit shall be claimed for the taxable years or tax periods 172
specified in the taxpayer's agreement with the tax credit 173
authority under division (D) of this section. With respect to 174
taxes imposed under section 5726.02, 5733.06, or 5747.02 or 175
Chapter 5751. of the Revised Code, the credit shall be claimed 176
in the order required under section 5726.98, 5733.98, 5747.98, 177
or 5751.98 of the Revised Code. The amount of the credit 178
available for a taxable year or for a calendar year that 179
includes a tax period equals the excess payroll for that year 180
multiplied by the percentage specified in the agreement with the 181
tax credit authority. 182

(C) (1) A taxpayer or potential taxpayer who proposes a 183
project to create new jobs in this state may apply to the tax 184
credit authority to enter into an agreement for a tax credit 185
under this section. 186

An application shall not propose to include both home- 187
based employees and employees who are not home-based employees 188
in the computation of Ohio employee payroll for the purposes of 189
the same tax credit agreement, except that a qualifying work- 190
from-home employee shall not be considered to be a home-based 191

employee unless so designated by the applicant. If a taxpayer or 192
potential taxpayer employs both home-based employees and 193
employees who are not home-based employees in a project, the 194
taxpayer shall submit separate applications for separate tax 195
credit agreements for the project, one of which shall include 196
home-based employees in the computation of Ohio employee payroll 197
and one of which shall include all other employees in the 198
computation of Ohio employee payroll. 199

The director of development shall prescribe the form of 200
the application. After receipt of an application, the authority 201
may enter into an agreement with the taxpayer for a credit under 202
this section if it determines all of the following: 203

(a) The taxpayer's project will increase payroll; 204

(b) The taxpayer's project is economically sound and will 205
benefit the people of this state by increasing opportunities for 206
employment and strengthening the economy of this state; 207

(c) Receiving the tax credit is a major factor in the 208
taxpayer's decision to go forward with the project. 209

(2) (a) A taxpayer that chooses to begin the project prior 210
to receiving the determination of the authority may, upon 211
submitting the taxpayer's application to the authority, request 212
that the chief investment officer of the nonprofit corporation 213
formed under section 187.01 of the Revised Code and the director 214
review the taxpayer's application and recommend to the authority 215
that the taxpayer's application be considered. As soon as 216
possible after receiving such a request, the chief investment 217
officer and the director shall review the taxpayer's application 218
and, if they determine that the application warrants 219
consideration by the authority, make that recommendation to the 220

authority not later than six months after the application is 221
received by the authority. 222

(b) The authority shall consider any taxpayer's 223
application for which it receives a recommendation under 224
division (C) (2) (a) of this section. If the authority determines 225
that the taxpayer does not meet all of the criteria set forth in 226
division (C) (1) of this section, the authority and the 227
department of development shall proceed in accordance with rules 228
adopted by the director pursuant to division (I) of this 229
section. 230

(D) An agreement under this section shall include all of 231
the following: 232

(1) A detailed description of the project that is the 233
subject of the agreement; 234

(2) (a) The term of the tax credit, which, except as 235
provided in division (D) (2) (b) or (C) of this section, shall not 236
exceed fifteen years, and the first taxable year, or first 237
calendar year that includes a tax period, for which the credit 238
may be claimed; 239

(b) If the tax credit is computed on the basis of home- 240
based employees, the term of the credit shall expire on or 241
before the last day of the taxable or calendar year ending 242
before the beginning of the seventh year after September 6, 243
2012, the effective date of H.B. 327 of the 129th general 244
assembly. 245

(c) If the taxpayer is a megaproject operator or a 246
megaproject supplier that meets the requirements described in 247
division (A) (13) (b) of this section, the term of the tax credit 248
shall not exceed thirty years. 249

(3) A requirement that the taxpayer shall maintain operations at the project location for at least the greater of seven years or the term of the credit plus three years;	250 251 252
(4) The percentage, as determined by the tax credit authority, of excess payroll that will be allowed as the amount of the credit for each taxable year or for each calendar year that includes a tax period;	253 254 255 256
(5) The pay increase factor to be applied to the taxpayer's baseline payroll;	257 258
(6) A requirement that the taxpayer annually shall report to the director of development full-time equivalent employees, payroll, Ohio employee payroll, investment, the provision of health care benefits and tuition reimbursement if required in the agreement, and other information the director needs to perform the director's duties under this section;	259 260 261 262 263 264
(7) A requirement that the director of development annually review the information reported under division (D) (6) of this section and verify compliance with the agreement; if the taxpayer is in compliance, a requirement that the director issue a certificate to the taxpayer stating that the information has been verified and identifying the amount of the credit that may be claimed for the taxable or calendar year. If the taxpayer is a megaproject supplier, the director shall issue such a certificate to the megaproject supplier and to any megaproject operator (a) to which the megaproject supplier directly sells tangible personal property and (b) that is authorized to claim the credit pursuant to division (D) (10) of this section.	265 266 267 268 269 270 271 272 273 274 275 276
(8) A provision providing that the taxpayer may not relocate a substantial number of employment positions from	277 278

elsewhere in this state to the project location unless the 279
director of development determines that the legislative 280
authority of the county, township, or municipal corporation from 281
which the employment positions would be relocated has been 282
notified by the taxpayer of the relocation. 283

For purposes of this section, the movement of an 284
employment position from one political subdivision to another 285
political subdivision shall be considered a relocation of an 286
employment position unless the employment position in the first 287
political subdivision is replaced. The movement of a qualifying 288
work-from-home employee to a different residence located in this 289
state or to the project location shall not be considered a 290
relocation of an employment position. 291

(9) If the tax credit is computed on the basis of home- 292
based employees, that the tax credit may not be claimed by the 293
taxpayer until the taxable year or tax period in which the 294
taxpayer employs at least two hundred employees more than the 295
number of employees the taxpayer employed on June 30, 2011; 296

(10) If the taxpayer is a megaproject supplier, the 297
percentage of the annual tax credit certified under division (D) 298
(7) of this section, up to one hundred per cent, that may be 299
claimed by each megaproject operator to which the megaproject 300
supplier directly sells tangible personal property, rather than 301
by that megaproject supplier, on the condition that the 302
megaproject operator continues to qualify as a megaproject 303
operator; 304

(11) If the taxpayer is a megaproject operator or 305
megaproject supplier, a requirement that the taxpayer meet and 306
maintain compliance with all thresholds and requirements to 307
which the taxpayer agreed, pursuant to division (A) (11) or (13) 308

of this section, respectively, as a condition of the operator's 309
project qualifying as a megaproject or the supplier qualifying 310
as a megaproject supplier until the end of the last year for 311
which the taxpayer qualifies for the credit authorized under 312
this section. In each year that a megaproject operator or 313
megaproject supplier is subject to an agreement with the tax 314
credit authority under this section and meets the requirements 315
of this division, the director of development shall issue a 316
certificate to the megaproject operator or megaproject supplier 317
stating that the megaproject operator or megaproject supplier 318
continues to meet those requirements. 319

(12) If the taxpayer is a megaproject operator, a 320
requirement that the megaproject operator submit, in a form 321
acceptable to the director of development, an economic impact 322
report with respect to each megaproject for which the 323
megaproject operator is designated, summarizing all of the 324
following for the reporting year: 325

(a) The aggregate amount of purchases made by the 326
megaproject operator for such megaproject from megaproject 327
suppliers; 328

(b) The aggregate amount of purchases made by the 329
megaproject operator for such megaproject from suppliers other 330
than megaproject suppliers; 331

(c) A summary of the construction activity for any 332
facilities at the site of the megaproject in that year; 333

(d) The aggregate amount expended by the megaproject 334
operator on research and development at the site of the 335
megaproject in that year; 336

(e) The number of employees working at the site of the 337

megaproject and the counties in which those employees reside; 338

(f) A summary of the supply chain activity in support of 339
the megaproject, including a list of the twenty-five suppliers 340
with a physical presence in Ohio from which the megaproject 341
operator made the most purchases in that year. 342

The economic impact report shall be due on or before the 343
first day of July of each year, beginning in the year specified 344
in the agreement with the tax credit authority. The information 345
required in the report shall be certified as true and correct by 346
an officer of the megaproject operator. If there is more than 347
one megaproject operator designated for a single megaproject, 348
all of the megaproject operators designated for the megaproject 349
may jointly submit a single report. Any information contained in 350
the report is a public record for purposes of section 149.43 of 351
the Revised Code and shall be published on the department of 352
development's web site. 353

(E) (1) If a taxpayer fails to meet or comply with any 354
condition or requirement set forth in a tax credit agreement, 355
the tax credit authority may amend the agreement to reduce the 356
percentage or term of the tax credit. The reduction of the 357
percentage or term may take effect in the current taxable or 358
calendar year. 359

(2) If the tax credit authority determines that a taxpayer 360
that is a megaproject operator of a megaproject described in 361
division (A) (11) (a) (ii) of this section is not fully compliant 362
with the requirements of the agreement, the authority may impose 363
a recoupment payment on the taxpayer in accordance with the 364
following: 365

(a) If, on the metric evaluation date, the taxpayer fails 366

to substantially meet the capital investment, full-time 367
equivalent employee, or payroll requirements included in the 368
agreement, an amount determined at the discretion of the 369
authority, not to exceed the sum of the following for all years 370
prior to the metric evaluation date: (i) the amount of taxes 371
that would have been imposed under Chapters 5739. and 5741. of 372
the Revised Code in the absence of the agreement, and (ii) the 373
amount of taxes that would have been imposed under Chapter 5751. 374
of the Revised Code on receipts realized from sales to the 375
taxpayer in the absence of the agreement; 376

(b) If the taxpayer fails to substantially maintain the 377
capital investment, full-time equivalent employee, or payroll 378
requirements included in the agreement in any year after the 379
metric evaluation date, an amount determined at the discretion 380
of the authority, not to exceed the sum of the following for the 381
calendar year in which taxpayer failed to meet the requirements: 382
(i) the amount of taxes that would have been imposed under 383
Chapters 5739. and 5741. of the Revised Code in the absence of 384
the agreement, and (ii) the amount of taxes that would have been 385
imposed under Chapter 5751. of the Revised Code on receipts 386
realized from sales to the taxpayer in the absence of the 387
agreement. 388

(3) The tax credit authority may, subject to any 389
requirements of the tax credit agreement, take into 390
consideration the taxpayer's prior performance and any market 391
conditions impacting the taxpayer when determining the amount of 392
the recoupment payment described in division (E) (2) of this 393
section. 394

(F) Projects that consist solely of point-of-final- 395
purchase retail facilities are not eligible for a tax credit 396

under this section. If a project consists of both point-of- 397
final-purchase retail facilities and nonretail facilities, only 398
the portion of the project consisting of the nonretail 399
facilities is eligible for a tax credit and only the excess 400
payroll from the nonretail facilities shall be considered when 401
computing the amount of the tax credit. If a warehouse facility 402
is part of a point-of-final-purchase retail facility and 403
supplies only that facility, the warehouse facility is not 404
eligible for a tax credit. Catalog distribution centers are not 405
considered point-of-final-purchase retail facilities for the 406
purposes of this division, and are eligible for tax credits 407
under this section. 408

(G) Financial statements and other information submitted 409
to the department of development or the tax credit authority by 410
an applicant or recipient of a tax credit under this section, 411
and any information taken for any purpose from such statements 412
or information, are not public records subject to section 149.43 413
of the Revised Code. However, the chairperson of the authority 414
may make use of the statements and other information for 415
purposes of issuing public reports or in connection with court 416
proceedings concerning tax credit agreements under this section. 417
Upon the request of the tax commissioner or, if the applicant or 418
recipient is an insurance company, upon the request of the 419
superintendent of insurance, the chairperson of the authority 420
shall provide to the commissioner or superintendent any 421
statement or information submitted by an applicant or recipient 422
of a tax credit in connection with the credit. The commissioner 423
or superintendent shall preserve the confidentiality of the 424
statement or information. 425

(H) A taxpayer claiming a credit under this section shall 426
submit to the tax commissioner or, if the taxpayer is an 427

insurance company, to the superintendent of insurance, a copy of 428
the director of development's certificate of verification under 429
division (D) (7) of this section with the taxpayer's tax report 430
or return for the taxable year or for the calendar year that 431
includes the tax period. Failure to submit a copy of the 432
certificate with the report or return does not invalidate a 433
claim for a credit if the taxpayer submits a copy of the 434
certificate to the commissioner or superintendent within the 435
time prescribed by section 5703.0510 of the Revised Code or 436
within thirty days after the commissioner or superintendent 437
requests it. 438

(I) The director of development, after consultation with 439
the tax commissioner and the superintendent of insurance and in 440
accordance with Chapter 119. of the Revised Code, shall adopt 441
rules necessary to implement this section, including rules that 442
establish a procedure to be followed by the tax credit authority 443
and the department of development in the event the authority 444
considers a taxpayer's application for which it receives a 445
recommendation under division (C) (2) (a) of this section but does 446
not approve it. The rules may provide for recipients of tax 447
credits under this section to be charged fees to cover 448
administrative costs of the tax credit program. For the purposes 449
of these rules, a qualifying work-from-home employee shall be 450
considered to be an employee employed at the applicant's project 451
location. The fees collected shall be credited to the tax 452
incentives operating fund created in section 122.174 of the 453
Revised Code. At the time the director gives public notice under 454
division (A) of section 119.03 of the Revised Code of the 455
adoption of the rules, the director shall submit copies of the 456
proposed rules to the chairpersons of the standing committees on 457
economic development in the senate and the house of 458

representatives. 459

(J) For the purposes of this section, a taxpayer may 460
include a partnership, a corporation that has made an election 461
under subchapter S of chapter one of subtitle A of the Internal 462
Revenue Code, or any other business entity through which income 463
flows as a distributive share to its owners. A partnership, S- 464
corporation, or other such business entity may elect to pass the 465
credit received under this section through to the persons to 466
whom the income or profit of the partnership, S-corporation, or 467
other entity is distributed. The election shall be made on the 468
annual report required under division (D)(6) of this section. 469
The election applies to and is irrevocable for the credit for 470
which the report is submitted. If the election is made, the 471
credit shall be apportioned among those persons in the same 472
proportions as those in which the income or profit is 473
distributed. 474

(K)(1) If the director of development determines that a 475
taxpayer who has received a credit under this section is not 476
complying with the requirements of the agreement, the director 477
shall notify the tax credit authority of the noncompliance. 478
After receiving such a notice, and after giving the taxpayer an 479
opportunity to explain the noncompliance, the tax credit 480
authority may require the taxpayer to refund to this state a 481
portion of the credit in accordance with the following: 482

(a) If the taxpayer fails to comply with the requirement 483
under division (D)(3) of this section, an amount determined in 484
accordance with the following: 485

(i) If the taxpayer maintained operations at the project 486
location for a period less than or equal to the term of the 487
credit, an amount not exceeding one hundred per cent of the sum 488

of any credits allowed and received under this section; 489

(ii) If the taxpayer maintained operations at the project 490
location for a period longer than the term of the credit, but 491
less than the greater of seven years or the term of the credit 492
plus three years, an amount not exceeding seventy-five per cent 493
of the sum of any credits allowed and received under this 494
section. 495

(b) If, on the metric evaluation date, the taxpayer fails 496
to substantially meet the job creation, payroll, or investment 497
requirements included in the agreement, an amount determined at 498
the discretion of the authority; 499

(c) If the taxpayer fails to substantially maintain the 500
number of new full-time equivalent employees or amount of 501
payroll required under the agreement at any time during the term 502
of the agreement after the metric evaluation date, an amount 503
determined at the discretion of the authority. 504

(2) If a taxpayer files for bankruptcy and fails as 505
described in division (K)(1)(a), (b), or (c) of this section, 506
the director may immediately commence an action to recoup an 507
amount not exceeding one hundred per cent of the sum of any 508
credits received by the taxpayer under this section. 509

(3) In determining the portion of the tax credit to be 510
refunded to this state, the tax credit authority shall consider 511
the effect of market conditions on the taxpayer's project and 512
whether the taxpayer continues to maintain other operations in 513
this state. After making the determination, the authority shall 514
certify the amount to be refunded to the tax commissioner or 515
superintendent of insurance, as appropriate. If the amount is 516
certified to the commissioner, the commissioner shall make an 517

assessment for that amount against the taxpayer under Chapter 518
5726., 5733., 5736., 5747., or 5751. of the Revised Code. If the 519
amount is certified to the superintendent, the superintendent 520
shall make an assessment for that amount against the taxpayer 521
under Chapter 5725. or 5729. of the Revised Code. The time 522
limitations on assessments under those chapters do not apply to 523
an assessment under this division, but the commissioner or 524
superintendent, as appropriate, shall make the assessment within 525
one year after the date the authority certifies to the 526
commissioner or superintendent the amount to be refunded. Within 527
ninety days after certifying the amount to be refunded, if 528
circumstances have changed, the authority may adjust the amount 529
to be refunded and certify the adjusted amount to the 530
commissioner or superintendent. The authority may only adjust 531
the amount to be refunded one time and only if the amount 532
initially certified by the authority has not been repaid, in 533
whole or in part, by the taxpayer or certified to the attorney 534
general for collection under section 131.02 of the Revised Code. 535

(L) On or before the first day of August each year, the 536
director of development shall submit a report to the governor, 537
the president of the senate, and the speaker of the house of 538
representatives on the tax credit program under this section. 539
The report shall include information on the number of agreements 540
that were entered into under this section during the preceding 541
calendar year, a description of the project that is the subject 542
of each such agreement, and an update on the status of projects 543
under agreements entered into before the preceding calendar 544
year. 545

(M) There is hereby created the tax credit authority, 546
which consists of the director of development and four other 547
members appointed as follows: the governor, the president of the 548

senate, and the speaker of the house of representatives each 549
shall appoint one member who shall be a specialist in economic 550
development; the governor also shall appoint a member who is a 551
specialist in taxation. Terms of office shall be for four years. 552
Each member shall serve on the authority until the end of the 553
term for which the member was appointed. Vacancies shall be 554
filled in the same manner provided for original appointments. 555
Any member appointed to fill a vacancy occurring prior to the 556
expiration of the term for which the member's predecessor was 557
appointed shall hold office for the remainder of that term. 558
Members may be reappointed to the authority. Members of the 559
authority shall receive their necessary and actual expenses 560
while engaged in the business of the authority. The director of 561
development shall serve as chairperson of the authority, and the 562
members annually shall elect a vice-chairperson from among 563
themselves. Three members of the authority constitute a quorum 564
to transact and vote on the business of the authority. The 565
majority vote of the membership of the authority is necessary to 566
approve any such business, including the election of the vice- 567
chairperson. 568

The director of development may appoint a professional 569
employee of the department of development to serve as the 570
director's substitute at a meeting of the authority. The 571
director shall make the appointment in writing. In the absence 572
of the director from a meeting of the authority, the appointed 573
substitute shall serve as chairperson. In the absence of both 574
the director and the director's substitute from a meeting, the 575
vice-chairperson shall serve as chairperson. 576

(N) For purposes of the credits granted by this section 577
against the taxes imposed under sections 5725.18 and 5729.03 of 578
the Revised Code, "taxable year" means the period covered by the 579

taxpayer's annual statement to the superintendent of insurance. 580

(O) On or before the first day of March of each of the 581
five calendar years beginning with 2014, each taxpayer subject 582
to an agreement with the tax credit authority under this section 583
on the basis of home-based employees shall report the number of 584
home-based employees and other employees employed by the 585
taxpayer in this state to the department of development. 586

(P) On or before the first day of January of 2019, the 587
director of development shall submit a report to the governor, 588
the president of the senate, and the speaker of the house of 589
representatives on the effect of agreements entered into under 590
this section in which the taxpayer included home-based employees 591
in the computation of income tax revenue, as that term was 592
defined in this section prior to the amendment of this section 593
by H.B. 64 of the 131st general assembly. The report shall 594
include information on the number of such agreements that were 595
entered into in the preceding six years, a description of the 596
projects that were the subjects of such agreements, and an 597
analysis of nationwide home-based employment trends, including 598
the number of home-based jobs created from July 1, 2011, through 599
June 30, 2017, and a description of any home-based employment 600
tax incentives provided by other states during that time. 601

(Q) The director of development may require any agreement 602
entered into under this section for a tax credit computed on the 603
basis of home-based employees to contain a provision that the 604
taxpayer makes available health care benefits and tuition 605
reimbursement to all employees. 606

(R) Original agreements approved by the tax credit 607
authority under this section in 2014 or 2015 before September 608
29, 2015, may be revised at the request of the taxpayer to 609

conform with the amendments to this section and sections 610
5733.0610, 5736.50, 5747.058, and 5751.50 of the Revised Code by 611
H.B. 64 of the 131st general assembly, upon mutual agreement of 612
the taxpayer and the department of development, and approval by 613
the tax credit authority. 614

(S) (1) As used in division (S) of this section: 615

(a) "Eligible agreement" means an agreement approved by 616
the tax credit authority under this section on or before 617
December 31, 2013. 618

(b) "Income tax revenue" has the same meaning as under 619
this section as it existed before September 29, 2015, the 620
effective date of the amendment of this section by H.B. 64 of 621
the 131st general assembly. 622

(2) In calendar year 2016 and thereafter, the tax credit 623
authority shall annually determine a withholding adjustment 624
factor to be used in the computation of income tax revenue for 625
eligible agreements. The withholding adjustment factor shall be 626
a numerical percentage that equals the percentage that employer 627
income tax withholding rates have been increased or decreased as 628
a result of changes in the income tax rates prescribed by 629
section 5747.02 of the Revised Code by amendment of that section 630
taking effect on or after June 29, 2013. 631

(3) Except as provided in division (S) (4) of this section, 632
for reporting periods ending in 2015 and thereafter for 633
taxpayers subject to eligible agreements, the tax credit 634
authority shall adjust the income tax revenue reported on the 635
taxpayer's annual report by multiplying the withholding 636
adjustment factor by the taxpayer's income tax revenue and doing 637
one of the following: 638

(a) If the income tax rates prescribed by section 5747.02 639
of the Revised Code have decreased by amendment of that section 640
taking effect on or after June 29, 2013, add the product to the 641
taxpayer's income tax revenue. 642

(b) If the income tax rates prescribed by section 5747.02 643
of the Revised Code have increased by amendment of that section 644
taking effect on or after June 29, 2013, subtract the product 645
from the taxpayer's income tax revenue. 646

(4) Division (S) (3) of this section shall not apply unless 647
all of the following apply for the reporting period with respect 648
to the eligible agreement: 649

(a) The taxpayer has achieved one hundred per cent of the 650
new employment commitment identified in the agreement. 651

(b) If applicable, the taxpayer has achieved one hundred 652
per cent of the new payroll commitment identified in the 653
agreement. 654

(c) If applicable, the taxpayer has achieved one hundred 655
per cent of the investment commitment identified in the 656
agreement. 657

(5) Failure by a taxpayer to have achieved any of the 658
applicable commitments described in divisions (S) (4) (a) to (c) 659
of this section in a reporting period does not disqualify the 660
taxpayer for the adjustment under division (S) of this section 661
for an ensuing reporting period. 662

(T) For reporting periods ending in calendar year 2020 or 663
thereafter, any taxpayer may include qualifying work-from-home 664
employees in its report required under division (D) (6) of this 665
section, and the compensation of such employees shall qualify as 666
Ohio employee payroll under division (A) (3) (a) of this section, 667

even if the taxpayer's application to the tax credit authority 668
to enter into an agreement for a tax credit under this section 669
was approved before September 29, 2017, the effective date of 670
the amendment of this section by H.B. 49 of the 132nd general 671
assembly. 672

(U) The director of development shall notify the tax 673
commissioner if the director determines that a megaproject 674
operator or megaproject supplier is not in compliance with the 675
agreement pursuant to a review conducted under division (D) (11) 676
of this section. 677

(V) Beginning in 2025 and in each fifth calendar year 678
thereafter, the tax commissioner shall adjust the following 679
amounts in September of that year: 680

(1) The fixed-asset investment threshold described in 681
division (A) (11) (c) (i) of this section and the Ohio employee 682
payroll threshold described in division (A) (11) (c) (ii) of this 683
section by completing the following calculations: 684

(a) Determine the percentage increase in the gross 685
domestic product deflator determined by the bureau of economic 686
analysis of the United States department of commerce from the 687
first day of January of the fifth preceding calendar year to the 688
last day of December of the preceding calendar year; 689

(b) Multiply that percentage increase by the fixed-asset 690
investment threshold and the Ohio employee payroll threshold for 691
the current year; 692

(c) Add the resulting products to the corresponding fixed- 693
asset investment threshold and Ohio employee payroll threshold 694
for the current year; 695

(d) Round the resulting fixed-asset investment sum to the 696

nearest multiple of ten million dollars and the Ohio employee payroll sum to the nearest multiple of one million dollars.

(2) The fixed-asset investment threshold described in division (A)(13)(b)(i) of this section and the Ohio employee payroll threshold described in division (A)(13)(b)(ii) of this section by completing the calculations described in divisions (V)(1)(a) to (c) of this section and rounding the resulting fixed-asset investment sum to the nearest multiple of one million dollars and the Ohio employee payroll sum to the nearest multiple of one hundred thousand dollars.

The commissioner shall certify the amount of the adjustments under divisions (V)(1) and (2) of this section to the director of development and to the tax credit authority not later than the first day of December of the year the commissioner computes the adjustment. Each certified amount applies to the ensuing calendar year and each calendar year thereafter until the tax commissioner makes a new adjustment. The tax commissioner shall not calculate a new adjustment in any year in which the resulting amount from the adjustment would be less than the corresponding amount for the current year.

Sec. 122.175. (A) As used in this section:

(1) "Capital investment project" means a plan of investment at a project site for the acquisition, construction, renovation, expansion, replacement, or repair of a computer data center or of computer data center equipment, but does not include any of the following:

(a) Project costs paid before a date determined by the tax credit authority for each capital investment project;

(b) Payments made to a related member as defined in

section 5733.042 of the Revised Code or to a consolidated 726
elected taxpayer or a combined taxpayer as defined in section 727
5751.01 of the Revised Code. 728

(2) "Computer data center" means a facility used or to be 729
used primarily to house computer data center equipment used or 730
to be used in conducting one or more computer data center 731
businesses, as determined by the tax credit authority. 732

(3) "Computer data center business" means, as may be 733
further determined by the tax credit authority, a business that 734
provides electronic information services as defined in division 735
(Y) (1) (c) of section 5739.01 of the Revised Code, or that leases 736
a facility to one or more such businesses. "Computer data center 737
business" does not include providing electronic publishing as 738
defined in that section. 739

(4) "Computer data center equipment" means tangible 740
personal property used or to be used for any of the following: 741

(a) To conduct a computer data center business, including 742
equipment cooling systems to manage the performance of computer 743
data center equipment; 744

(b) To generate, transform, transmit, distribute, or 745
manage electricity necessary to operate the tangible personal 746
property used or to be used in conducting a computer data center 747
business; 748

(c) As building and construction materials sold to 749
construction contractors for incorporation into a computer data 750
center. 751

(5) "Eligible computer data center" means a computer data 752
center that satisfies all of the following requirements: 753

(a) One or more taxpayers operating a computer data center business at the project site will, in the aggregate, make payments for a capital investment project of at least one hundred million dollars at the project site during one of the following cumulative periods:

(i) For projects beginning in 2013, six consecutive calendar years;

(ii) For projects beginning in 2014, four consecutive calendar years;

(iii) For projects beginning in or after 2015, three consecutive calendar years.

(b) One or more taxpayers operating a computer data center business at the project site will, in the aggregate, pay annual compensation that is subject to the withholding obligation imposed under section 5747.06 of the Revised Code of at least one million five hundred thousand dollars to employees employed at the project site for each year of the agreement beginning on or after the first day of the twenty-fifth month after the agreement was entered into under this section.

(c) If the computer data center has an aggregate monthly maximum demand that is greater than two hundred fifty megawatts, the data center offsets its consumption from the electrical grid through one of the methods described in divisions (A) (2) (a) to (c) of section 4941.02 of the Revised Code or under division (A) (2) (d) of section 4941.02 of the Revised Code with at least a fifteen-year purchase power agreement.

(6) "Person" has the same meaning as in section 5701.01 of the Revised Code.

(7) "Project site," "related member," and "tax credit

authority" have the same meanings as in sections 122.17 and 783
122.171 of the Revised Code. 784

(8) "Taxpayer" means any person subject to the taxes 785
imposed under Chapters 5739. and 5741. of the Revised Code. 786

(B) The tax credit authority may ~~completely or partially~~ 787
exempt from the taxes levied under Chapters 5739. and 5741. of 788
the Revised Code the sale, storage, use, or other consumption of 789
computer data center equipment used or to be used at an eligible 790
computer data center. Any such exemption shall extend to charges 791
for the delivery, installation, or repair of the computer data 792
center equipment subject to the exemption under this section. 793

(C) A taxpayer that proposes a capital improvement project 794
for an eligible computer data center in this state may apply to 795
the tax credit authority to enter into an agreement under this 796
section authorizing a complete or partial exemption from the 797
taxes imposed under Chapters 5739. and 5741. of the Revised Code 798
on computer data center equipment purchased by the applicant or 799
any other taxpayer that operates a computer data center business 800
at the project site and used or to be used at the eligible 801
computer data center. The director of development shall 802
prescribe the form of the application. After receipt of an 803
application, the authority shall forward copies of the 804
application to the tax commissioner, who shall review the 805
application to determine the economic impact that the proposed 806
eligible computer data center would have on the state and any 807
affected political subdivisions and submit to the authority a 808
summary of their determinations. The authority shall also 809
forward a copy of the application to the director of development 810
who shall review the application to determine the economic 811
impact that the proposed eligible computer data center would 812

have on the state and the affected political subdivisions and 813
shall submit a summary of their determinations and 814
recommendations to the authority. 815

(D) Upon review and consideration of such determinations 816
and recommendations, the tax credit authority may enter into an 817
agreement with the applicant and any other taxpayer that 818
operates a computer data center business at the project site for 819
a complete or partial exemption from the taxes imposed under 820
Chapters 5739. and 5741. of the Revised Code on computer data 821
center equipment used or to be used at an eligible computer data 822
center if the authority determines all of the following: 823

(1) The capital investment project for the eligible 824
computer data center will increase payroll and the amount of 825
income taxes to be withheld from employee compensation pursuant 826
to section 5747.06 of the Revised Code. 827

(2) The applicant is economically sound and has the 828
ability to complete or effect the completion of the proposed 829
capital investment project. 830

(3) The applicant intends to and has the ability to 831
maintain operations at the project site for the term of the 832
agreement. 833

(4) Receiving the exemption is a major factor in the 834
applicant's decision to begin, continue with, or complete the 835
capital investment project. 836

(E) An agreement entered into under this section shall 837
include all of the following: 838

(1) A detailed description of the capital investment 839
project that is the subject of the agreement, including the 840
amount of the investment, the period over which the investment 841

has been or is being made, the annual compensation to be paid by 842
each taxpayer subject to the agreement to its employees at the 843
project site, and the anticipated amount of income taxes to be 844
withheld from employee compensation pursuant to section 5747.06 845
of the Revised Code. 846

(2) The percentage of the exemption from the taxes imposed 847
under Chapters 5739. and 5741. of the Revised Code for the 848
computer data center equipment used or to be used at the 849
eligible computer data center, the length of time the computer 850
data center equipment will be exempted, and the first date on 851
which the exemption applies. 852

(3) A requirement that the computer data center remain an 853
eligible computer data center during the term of the agreement 854
and that the applicant maintain operations at the eligible 855
computer data center during that term. An applicant does not 856
violate the requirement described in division (E)(3) of this 857
section if the applicant ceases operations at the eligible 858
computer data center during the term of the agreement but 859
resumes those operations within eighteen months after the date 860
of cessation. The agreement shall provide that, in such a case, 861
the applicant and any other taxpayer that operates a computer 862
data center business at the project site shall not claim the tax 863
exemption authorized in the agreement for any purchase of 864
computer data center equipment made during the period in which 865
the applicant did not maintain operations at the eligible 866
computer data center. 867

(4) A requirement that, for each year of the term of the 868
agreement beginning on or after the first day of the twenty- 869
fifth month after the date the agreement was entered into, one 870
or more taxpayers operating a computer data center business at 871

the project site will, in the aggregate, pay annual compensation 872
that is subject to the withholding obligation imposed under 873
section 5747.06 of the Revised Code of at least one million five 874
hundred thousand dollars to employees at the eligible computer 875
data center. 876

(5) A requirement that each taxpayer subject to the 877
agreement annually report to the director of development 878
employment, tax withholding, capital investment, and other 879
information required by the director to perform the director's 880
duties under this section. 881

(6) A requirement that the director of development 882
annually review the annual reports of each taxpayer subject to 883
the agreement to verify the information reported under division 884
(E) (5) of this section and compliance with the agreement. Upon 885
verification, the director shall issue a certificate to each 886
such taxpayer stating that the information has been verified and 887
that the taxpayer remains eligible for the exemption specified 888
in the agreement. 889

(7) A provision providing that the taxpayers subject to 890
the agreement may not relocate a substantial number of 891
employment positions from elsewhere in this state to the project 892
site unless the director of development determines that the 893
appropriate taxpayer notified the legislative authority of the 894
county, township, or municipal corporation from which the 895
employment positions would be relocated. For purposes of this 896
paragraph, the movement of an employment position from one 897
political subdivision to another political subdivision shall be 898
considered a relocation of an employment position unless the 899
movement is confined to the project site. The transfer of an 900
employment position from one political subdivision to another 901

political subdivision shall not be considered a relocation of an 902
employment position if the employment position in the first 903
political subdivision is replaced by another employment 904
position. 905

(8) A waiver by each taxpayer subject to the agreement of 906
any limitations periods relating to assessments or adjustments 907
resulting from the taxpayer's failure to comply with the 908
agreement. 909

(F) The term of an agreement under this section shall be 910
determined by the tax credit authority, and the amount of the 911
exemption shall not exceed ~~one hundred~~ fifty per cent of such 912
taxes that would otherwise be owed in respect to the exempted 913
computer data center equipment. 914

(G) If any taxpayer subject to an agreement under this 915
section fails to meet or comply with any condition or 916
requirement set forth in the agreement, the tax credit authority 917
may amend the agreement to reduce the percentage of the 918
exemption or term during which the exemption applies to the 919
computer data center equipment used or to be used by the 920
noncompliant taxpayer at an eligible computer data center. The 921
reduction of the percentage or term may take effect in the 922
current calendar year. 923

(H) Financial statements and other information submitted 924
to the department of development or the tax credit authority by 925
an applicant for or recipient of an exemption under this 926
section, and any information taken for any purpose from such 927
statements or information, are not public records subject to 928
section 149.43 of the Revised Code. However, the chairperson of 929
the authority may make use of the statements and other 930
information for purposes of issuing public reports or in 931

connection with court proceedings concerning tax exemption 932
agreements under this section. Upon the request of the tax 933
commissioner, the chairperson of the authority shall provide to 934
the tax commissioner any statement or other information 935
submitted by an applicant for or recipient of an exemption under 936
this section. The tax commissioner shall preserve the 937
confidentiality of the statement or other information. 938

(I) The tax commissioner shall issue a direct payment 939
permit under section 5739.031 of the Revised Code to each 940
taxpayer subject to an agreement under this section. Such direct 941
payment permit shall authorize the taxpayer to pay any sales and 942
use taxes due on purchases of computer data center equipment 943
used or to be used in an eligible computer data center and to 944
pay any sales and use taxes due on purchases of tangible 945
personal property or taxable services other than computer data 946
center equipment used or to be used in an eligible computer data 947
center directly to the tax commissioner. Each such taxpayer 948
shall pay pursuant to such direct payment permit all sales tax 949
levied on such purchases under sections 5739.02, 5739.021, 950
5739.023, and 5739.026 of the Revised Code and all use tax 951
levied on such purchases under sections 5741.02, 5741.021, 952
5741.022, and 5741.023 of the Revised Code, consistent with the 953
terms of the agreement entered into under this section. 954

During the term of an agreement under this section each 955
taxpayer subject to the agreement shall submit to the tax 956
commissioner a return that shows the amount of computer data 957
center equipment purchased for use at the eligible computer data 958
center, the amount of tangible personal property and taxable 959
services other than computer data center equipment purchased for 960
use at the eligible computer data center, the amount of tax 961
under Chapter 5739. or 5741. of the Revised Code that would be 962

due in the absence of the agreement under this section, the 963
exemption percentage for computer data center equipment 964
specified in the agreement, and the amount of tax due under 965
Chapter 5739. or 5741. of the Revised Code as a result of the 966
agreement under this section. Each such taxpayer shall pay the 967
tax shown on the return to be due in the manner and at the times 968
as may be further prescribed by the tax commissioner. Each such 969
taxpayer shall include a copy of the director of development's 970
certificate of verification issued under division (E) (6) of this 971
section. Failure to submit a copy of the certificate with the 972
return does not invalidate the claim for exemption if the 973
taxpayer submits a copy of the certificate to the tax 974
commissioner within the time prescribed by section 5703.0510 of 975
the Revised Code. 976

(J) If the director of development determines that one or 977
more taxpayers received an exemption from taxes due on the 978
purchase of computer data center equipment purchased for use at 979
a computer data center that no longer complies with the 980
requirement under division (E) (3) of this section, the director 981
shall notify the tax credit authority and, if applicable, the 982
taxpayer that applied to enter the agreement for the exemption 983
under division (C) of this section of the noncompliance. After 984
receiving such a notice, and after giving each taxpayer subject 985
to the agreement an opportunity to explain the noncompliance, 986
the authority may terminate the agreement and require each such 987
taxpayer to pay to the state all or a portion of the taxes that 988
would have been owed in regards to the exempt equipment in 989
previous years, all as determined under rules adopted pursuant 990
to division (K) of this section. In determining the portion of 991
the taxes that would have been owed on the previously exempted 992
equipment to be paid to this state by a taxpayer, the authority 993

shall consider the effect of market conditions on the eligible 994
computer data center, whether the taxpayer continues to maintain 995
other operations in this state, and, with respect to agreements 996
involving multiple taxpayers, the taxpayer's level of 997
responsibility for the noncompliance. After making the 998
determination, the authority shall certify to the tax 999
commissioner the amount to be paid by each taxpayer subject to 1000
the agreement. The tax commissioner shall make an assessment for 1001
that amount against each such taxpayer under Chapter 5739. or 1002
5741. of the Revised Code. The time limitations on assessments 1003
under those chapters do not apply to an assessment under this 1004
division, but the tax commissioner shall make the assessment 1005
within one year after the date the authority certifies to the 1006
tax commissioner the amount to be paid by the taxpayer. 1007

(K) The director of development, after consultation with 1008
the tax commissioner and in accordance with Chapter 119. of the 1009
Revised Code, shall adopt rules necessary to implement this 1010
section. The rules may provide for recipients of tax exemptions 1011
under this section to be charged fees to cover administrative 1012
costs incurred in the administration of this section. The fees 1013
collected shall be credited to the tax incentives operating fund 1014
created in section 122.174 of the Revised Code. At the time the 1015
director gives public notice under division (A) of section 1016
119.03 of the Revised Code of the adoption of the rules, the 1017
director shall submit copies of the proposed rules to the 1018
chairpersons of the standing committees on economic development 1019
in the senate and the house of representatives. 1020

(L) On or before the first day of August of each year, the 1021
director of development shall submit a report to the governor, 1022
the president of the senate, and the speaker of the house of 1023
representatives on the tax exemption authorized under this 1024

section. The report shall include information on the number of 1025
agreements that were entered into under this section during the 1026
preceding calendar year, a description of the eligible computer 1027
data center that is the subject of each such agreement, and an 1028
update on the status of eligible computer data centers under 1029
agreements entered into before the preceding calendar year. 1030

(M) A taxpayer may be made a party to an existing 1031
agreement entered into under this section by the tax credit 1032
authority and another taxpayer or group of taxpayers. In such a 1033
case, the taxpayer shall be entitled to all benefits and bound 1034
by all obligations contained in the agreement and all 1035
requirements described in this section. When an agreement 1036
includes multiple taxpayers, each taxpayer shall be entitled to 1037
a direct payment permit as authorized in division (I) of this 1038
section. 1039

Sec. 122.55. The director of development shall prepare and 1040
publish on its web site resources for use by political 1041
subdivisions when authorizing tax incentives, as defined in 1042
section 5709.94 of the Revised Code, for data centers, as 1043
defined in section 122.17 of the Revised Code. 1044

Sec. 149.437. (A) As used in this section: 1045

(1) "Nondisclosure agreement" means an agreement or 1046
contract that includes a provision or clause that prohibits an 1047
individual from disclosing, discussing, describing, or 1048
commenting on specified information. 1049

(2) "Public record" has the same meaning as in section 1050
149.43 of the Revised Code. 1051

(B) Notwithstanding any terms of the agreement to the 1052
contrary, a nondisclosure agreement shall not be construed to 1053

prohibit or otherwise limit a public record from being made 1054
available under section 149.43 of the Revised Code. 1055

Sec. 1521.301. (A) As used in sections 1521.301 to 1056
1521.303 of the Revised Code: 1057

(1) "Closed-loop water or liquid cooling system" and "data 1058
center" have the same meanings as in section 4941.01 of the 1059
Revised Code. 1060

(2) "Rules" means any rules adopted by the chief of the 1061
division of water resources under section 1521.303 of the 1062
Revised Code. 1063

(B) Any person that owns a data center or a major utility 1064
facility that is subject to regulation under Chapter 4906. of 1065
the Revised Code that solely supplies power to a data center 1066
shall accurately measure and report the consumptive use of water 1067
by such data center or major utility facility in accordance with 1068
section 1521.302 of the Revised Code and any rules. 1069

(C) Any person that owns a data center shall implement 1070
best industry practices for water conservation and water-use 1071
efficiency in the design, construction, and operation of the 1072
data center. Practices may include modern direct evaporative 1073
closed-loop water or liquid cooling systems or recirculating 1074
water systems, water reuse and recycling systems, high- 1075
efficiency cooling technologies, air-cooled or hybrid cooling 1076
systems where feasible, automated leak detection and monitoring 1077
technologies, use of nonpotable or reclaimed water sources where 1078
practicable, and other operational or engineering measures 1079
designated to minimize consumptive use and optimize water 1080
efficiency. Any design of a closed-loop water or liquid cooling 1081
system shall ensure waste streams may be properly treated and 1082

disposed of in accordance with any applicable laws. 1083

Sec. 1521.302. (A) Any person that owns a data center or a 1084
major utility facility that is subject to regulation under 1085
Chapter 4906. of the Revised Code that solely supplies power to 1086
a data center shall submit to the chief of the division of water 1087
resources an annual report not later than the first day of 1088
February each year, in a manner determined by the chief, that 1089
includes all of the following: 1090

(1) Documentation that the person that owns the data 1091
center or major utility facility has complied with best industry 1092
practices for water conservation in accordance with division (C) 1093
of section 1521.301 of the Revised Code; 1094

(2) The total consumptive use of water per day by the data 1095
center or the major utility facility for the previous calendar 1096
year, which shall include a description of the total water 1097
consumption by source type, including potable, nonpotable, and 1098
reclaimed; 1099

(3) A description of any additional measures undertaken by 1100
the data center or major utility facility in the previous 1101
calendar year to improve efficiency and reduce water 1102
consumption; 1103

(4) Any other information as the chief may require by 1104
rule. 1105

(B) The chief shall prepare an annual report that compiles 1106
data received in accordance with division (A) of this section 1107
from the previous calendar year. The chief shall submit the 1108
annual report to the speaker of the house of representatives, 1109
the senate president, and the house of representatives and 1110
senate committees that consider energy legislation and natural 1111

resources legislation within ninety days after preparing such 1112
report. 1113

Sec. 1521.303. (A) The chief of the division of water 1114
resources may adopt rules in accordance with Chapter 119. of the 1115
Revised Code that establish any of the following: 1116

(1) Standards for accurate measurement and reporting of 1117
consumptive use of water; 1118

(2) The consumptive use coefficient for data centers; 1119

(3) A nonrefundable fee to accompany each annual report, 1120
credited to the water management fund created under section 1121
1521.22 of the Revised Code. 1122

(4) Any other provisions necessary to administer and 1123
enforce sections 1521.301 to 1521.303 of the Revised Code. 1124

(B) Notwithstanding any provision of section 121.95 of the 1125
Revised Code to the contrary, a regulatory restriction contained 1126
in a rule adopted under this section is not subject to sections 1127
121.95 to 121.953 of the Revised Code. 1128

Sec. 3745.015. There is hereby created in the state 1129
treasury the environmental protection fund consisting of money 1130
credited to the fund under division (A) (3) of section 3734.57– 1131
~~and~~, division (E) of section 3714.07, and section 6111.70 of 1132
the Revised Code. The environmental protection agency shall use 1133
money in the fund to pay the agency's costs associated with 1134
administering and enforcing, or otherwise conducting activities 1135
under, this chapter and Chapters 3704., 3734., 3746., 3747., 1136
3748., 3750., 3751., 3752., 3753., 5709., 6101., 6103., 6105., 1137
6109., 6111., 6112., 6113., 6115., 6117., and 6119. of the 1138
Revised Code, including providing compliance assistance to small 1139
businesses. However, any fees credited to the fund under section 1140

6111.70 of the Revised Code shall be used to pay the agency's 1141
costs associated with implementing that section. 1142

Sec. 4582.432. (A) As used in this section: 1143

(1) "Capital leaseback agreement" means the sale or 1144
transfer of property by a port authority to another person 1145
contemporaneously followed by the leasing of the property to the 1146
port authority. 1147

(2) "Data center" has the same meaning as defined in 1148
section 4941.01 of the Revised Code. 1149

(B) Notwithstanding any section of the Revised Code to the 1150
contrary, a port authority shall not enter into a capital 1151
leaseback agreement for a data center project located outside 1152
the authority's territorial jurisdiction. 1153

Sec. 4941.01. As used in this chapter: 1154

(A) "Closed-loop water or liquid cooling system" means a 1155
sealed cooling process in which the same water or coolant 1156
circulates continuously with de minimis withdrawal from waters 1157
of the state or discharge into waters of the state. 1158

(B) "Data center" means one or more buildings or physical 1159
facilities or infrastructure, located on a single real property 1160
parcel or on contiguous, adjacent, or otherwise aggregated real 1161
property parcels requiring peak demand capacity that is greater 1162
than twenty-five megawatts at a single building or physical 1163
location and that are used primarily or exclusively for digital 1164
information services such as the management, storage, 1165
processing, and dissemination of electronic data and information 1166
through the use of computer systems, servers, networking 1167
equipment, and related components, including equipment cooling 1168
systems, or virtual currency mining. 1169

(C) "Electric distribution utility" has the same meaning 1170
as in section 4928.01 of the Revised Code. 1171

(D) "Mercantile customer self-power system" has the same 1172
meaning as in section 4928.73 of the Revised Code. 1173

(E) (1) "Virtual currency" means any type of digital unit 1174
that is used as a medium of exchange or a form of digitally 1175
stored value or that is incorporated into payment system 1176
technology and that may or may not have a centralized repository 1177
or administrator, including digital units of exchange that are 1178
created or obtained by computing or manufacturing effort. 1179

(2) "Virtual currency" does not include digital units of 1180
exchange that are used as follows: 1181

(a) Solely within online gaming platforms with no market 1182
or application outside of such gaming platforms; 1183

(b) Exclusively as part of a consumer affinity or rewards 1184
program, and can be applied solely as payment for purchases with 1185
the issuer or other designated merchants, but cannot be 1186
converted into or redeemed for fiat currency. 1187

(F) "Virtual currency mining" means the process by which 1188
individuals or other entities use data, computer code, 1189
calculations, and any other computing process to validate 1190
transactions involving virtual currency and earn virtual 1191
currency as compensation. 1192

(G) "Standard service offer" means a standard service 1193
offer under section 4928.141 of the Revised Code. 1194

Sec. 4941.02. (A) As of the effective date of this 1195
section, each new data center in this state with an aggregate 1196
monthly maximum demand of greater than two hundred fifty 1197

megawatts shall be supplied with all of its electricity using 1198
any or all of the following sources that must offset any 1199
consumption from the electrical grid by the data center: 1200

(1) One or more electric generating facilities constructed 1201
to supply electricity to the data center; 1202

(2) One or more generation or power supply arrangements to 1203
supply electricity to the data center, including any of the 1204
following: 1205

(a) Mercantile customer self-power systems; 1206

(b) Customer-generator projects; 1207

(c) Co-located load arrangements regulated by the federal 1208
energy regulatory commission; 1209

(d) Purchase power agreements; 1210

(e) Only if at least one of the sources described in 1211
division (A) (1) or divisions (A) (2) (a) to (d) of this section is 1212
used, qualified PJM interconnection L.L.C. market solutions. 1213

(3) Only if at least one of the sources described in 1214
division (A) (1) or divisions (A) (2) (a) to (d) of this section is 1215
used, service through a tariff approved by the public utilities 1216
commission under section 4941.04 of the Revised Code. 1217

(B) An electric distribution utility shall have no 1218
obligation to provide a standard service offer to a data center 1219
subject to this section. 1220

(C) The nameplate capacity of any electric generating 1221
facility built, purchased, or upgraded for purposes of division 1222
(A) (1) of this section shall be determined by multiplying the 1223
nameplate capacity of the generating facility by the federal 1224

energy regulatory commission reliability factor. 1225

Sec. 4941.03. Notwithstanding any provision of the Revised Code to the contrary: 1226
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(A) All direct costs associated with providing retail electric service to data centers, including any generation costs, transmission costs, and distribution costs, and costs associated with complying with section 4941.02 of the Revised Code, shall be allocated and recovered solely from data center operators. 1228
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(B) No other electric service customer in this state, other than a data center operator, shall pay any amount described in division (A) of this section. 1234
1235
1236

(C) An electric distribution utility shall not provide a standard service offer to a data center. 1237
1238

Sec. 4941.04. Notwithstanding any provision of the Revised Code to the contrary: 1239
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(A) Except as provided in section 4941.05 of the Revised Code, not later than sixty days after the effective date of this section, each electric distribution utility that does not have a currently approved data center tariff that incorporates a separate set of terms and conditions for data center operators shall file a tariff with the public utilities commission that classifies data centers as a separate rate class and allocates electric service costs for data centers to data center operators. The data center tariff filing may set minimum requirements for any of the following regarding data centers: 1241
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(1) Demand percentage; 1251

(2) Collateral; 1252

<u>(3) Term length;</u>	1253
<u>(4) Exit and termination fees;</u>	1254
<u>(5) Any other factors deemed necessary and essential to ensure protection for all other electric service customers in this state.</u>	1255 1256 1257
<u>(B) The commission shall ensure that a tariff under this section complies with section 4941.03 of the Revised Code.</u>	1258 1259
<u>Sec. 4941.05.</u> <u>(A) Except as provided in division (B) of this section, sections 4941.02 to 4941.04 of the Revised Code do not apply to data center operators that had contracted with an electric distribution utility for either the provision of electric utility service or to otherwise construct facilities to provide such service prior to the effective date of this section.</u>	1260 1261 1262 1263 1264 1265 1266
<u>(B) Sections 4941.02 to 4941.04 of the Revised Code apply to a data center operator described in division (A) of this section if that operator makes a material capacity increase, as determined by the public utilities commission.</u>	1267 1268 1269 1270
<u>(C) With respect to an electric distribution utility that already has an approved tariff that specifically addresses service to data center operators as of the effective date of this section, sections 4941.02 to 4941.04 of the Revised Code do not apply to data center operators during the term of a contract with such electric distribution utility for electric utility services executed under that previously approved tariff. Such an electric distribution utility with a previously approved tariff shall still comply with sections 4941.02 to 4941.04 of the Revised Code and either obtain approval for a new tariff that complies with those sections or seek a finding from the</u>	1271 1272 1273 1274 1275 1276 1277 1278 1279 1280 1281

commission confirming that the existing tariff complies with 1282
sections 4941.02 to 4941.04 of the Revised Code. If a new tariff 1283
is approved and becomes effective, the terms of that updated 1284
tariff shall apply prospectively and all contracts for electric 1285
utility services going forward from that date will comply with 1286
sections 4941.02 to 4941.04 of the Revised Code. 1287

(D) If there is a public utility proposal for a new tariff 1288
to specifically address service to data center operators as of 1289
the effective date of this section, the commission shall 1290
consider the proposal under sections 4941.02 to 4941.04 of the 1291
Revised Code. 1292

Sec. 4941.06. (A) The public utilities commission shall 1293
adopt rules necessary to implement this chapter, including any 1294
necessary fees. 1295

(B) Notwithstanding any provision of section 121.95 of the 1296
Revised Code to the contrary, a regulatory restriction contained 1297
in a rule adopted under this section is not subject to sections 1298
121.95 to 121.953 of the Revised Code. 1299

Sec. 5709.94. (A) As used in this section: 1300

(1) "Data center" has the same meaning as in section 1301
122.17 of the Revised Code. 1302

(2) "Tax incentive" means the programs and assistance 1303
provided or administered by a political subdivision under 1304
Chapters 725. and 1728. and sections 3735.67 to 3735.70, 5709.40 1305
to 5709.43, 5709.61 to 5709.69, 5709.73 to 5709.75, and 5709.77 1306
to 5709.81 of the Revised Code and any other section of the 1307
Revised Code under which a political subdivision authorizes the 1308
exemption of property from taxation, whether in whole or in 1309
part. 1310

(B) Notwithstanding anything in the Revised Code to the 1311
contrary: 1312

(1) Not more than fifty per cent of the increased value of 1313
real property that is the site of, or constitutes, a data center 1314
may be exempted from taxation pursuant to Chapters 725. and 1315
1728. or sections 3735.65 to 3735.70, 5709.40 to 5709.43, 1316
5709.61 to 5709.69, 5709.73 to 5709.75, or 5709.78 to 5709.83 of 1317
the Revised Code, and only the increased value may be so 1318
exempted. 1319

(2) An ordinance or resolution creating an incentive 1320
district under division (C) of section 5709.40 or 5709.73 or 1321
division (B) of section 5709.78 of the Revised Code may apply a 1322
different exemption percentage to real property that is the site 1323
of, or that constitutes, a data center than the exemption 1324
percentage that applies to other real property within the 1325
incentive district. 1326

(C) Any political subdivision that provides a tax 1327
incentive for a data center shall obtain security to ensure 1328
performance of any contractual obligation required of the 1329
developer, owner, or operator of the data center, and of the 1330
successors of any of those, in connection with the incentive. 1331
The agreement detailing those obligations shall state the total 1332
number of full-time employees to be employed at the data center 1333
and the total projected salary for those employees over the 1334
first ten years of the data center's operation. That total 1335
amount shall be the minimum amount of the security, but the 1336
agreement may require additional obligations and security. 1337

The security required by this division shall be one of the 1338
following: 1339

(1) A surety bond issued by a surety company authorized to 1340
do business in this state in favor of the political subdivision; 1341

(2) Cash, certificates of deposit, or government 1342
securities. 1343

The developer, owner, or operator of the data center shall 1344
deposit the security with the political subdivision that 1345
authorizes the tax incentive before the tax commissioner or 1346
county auditor approves an application for tax exemption based 1347
on the tax incentive pursuant to section 5715.27 of the Revised 1348
Code. If certificates of deposit or government securities are so 1349
deposited, any interest received shall be paid to the person 1350
that deposited the certificates or securities. 1351

Sec. 6111.70. (A) As used in this section, "data center" 1352
has the same meaning as in section 4941.01 of the Revised Code. 1353

(B) (1) Any person that owns a data center shall install 1354
and utilize a wastewater quality monitoring system to monitor 1355
the data center's wastewater discharge in accordance with rules 1356
adopted under this section. 1357

(2) The person that owns a data center shall submit a 1358
quarterly report to the director of environmental protection 1359
regarding the data center's wastewater quality measurements from 1360
the prior quarter. Such quarterly report shall include a 1361
description of any anomalies that the wastewater quality 1362
monitoring system detected during the respective quarter in 1363
accordance with rules adopted by the director of environmental 1364
protection under this section. 1365

(C) Not later than sixty days after the effective date of 1366
this section, the director shall adopt rules in accordance with 1367
Chapter 119. of the Revised Code establishing a wastewater 1368

testing and methodology plan for data centers. Such rules also 1369
shall establish a requirement that any person that owns a data 1370
center report wastewater quality data in a manner and frequency 1371
established by the director. 1372

(D) Not later than the first day of February that occurs 1373
after the effective date of this section, and every first day of 1374
February thereafter, the director of environmental protection 1375
shall submit an annual report that compiles data received from 1376
findings and reports submitted under divisions (B) and (C) of 1377
this section to the chairs of the house of representatives and 1378
senate committees that consider energy legislation and natural 1379
resources legislation. 1380

(E) The director shall establish an annual fee to be paid 1381
by the person that owns the data center to the environmental 1382
protection agency to offset the costs of the agency in 1383
implementing this section. The fees shall be deposited into the 1384
environmental protection fund created under section 3745.015 of 1385
the Revised Code. 1386

(F) (1) The director shall adopt rules in accordance with 1387
Chapter 119. of the Revised Code to administer and enforce this 1388
section, including defining "anomalies" for purposes of this 1389
section. 1390

(2) Notwithstanding any provision of section 121.95 of the 1391
Revised Code to the contrary, a regulatory restriction contained 1392
in a rule adopted under this section is not subject to sections 1393
121.95 to 121.953 of the Revised Code. 1394

Section 2. That existing sections 122.17, 122.175, and 1395
3745.015 of the Revised Code are hereby repealed. 1396

Section 3. (A) The enactment by this act of section 1397

5709.94 of the Revised Code applies to tax exemptions authorized	1398
or approved on or after the effective date of this section.	1399
(B) The amendment by this act of sections 122.17 and	1400
122.175 of the Revised Code applies to agreements entered into	1401
under that applicable section on or after the effective date of	1402
this section.	1403