

**As Introduced**

**133rd General Assembly**

**Regular Session**

**2019-2020**

**S. B. No. 153**

**Senator Dolan**

**Cosponsors: Senators Hackett, Antonio, Williams, Coley**

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**A BILL**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) Fifty million dollars; 64

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

relocated. 225

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

refunded. 346

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

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

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

(1) For 2010, thirteen million dollars; 375

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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