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136th General Assembly
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Sub. H. B. No. 646

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

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

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

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

(1) "Payroll" means the total taxable income paid by the employer during the employer's taxable year, or during the calendar year that includes the employer's tax period, to each employee or each home-based employee employed in the project to the extent such payroll is not used to determine the credit under section 122.171 of the Revised Code. "Payroll" excludes amounts paid before the day the taxpayer becomes eligible for

the credit and retirement or other benefits paid or contributed by the employer to or on behalf of employees.

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

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

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

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

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

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

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

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

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

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

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

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

(10) "Reporting period" means a period corresponding to the annual report required under division (D)(6) of this section.

(11) "Megaproject" means a project in this state that meets all of the following requirements:

(a) At least one of the following applies:

(i) The project requires unique sites, extremely robust utility service, and a technically skilled workforce and does not involve the acquisition, construction, renovation, expansion, replacement, or repair of a data center.

(ii) The megaproject operator of the project has its corporate headquarters in the United States, incurs more than fifty per cent of its research and development expenses in the United States in the year preceding the date the tax credit authority approves the project for a credit under this section, and builds and operates semiconductor wafer manufacturing factories in this state or intends to do so by the metric evaluation date applicable to the megaproject operator.

(b) The megaproject operator of the project agrees, in an agreement with the tax credit authority under division (D) of this section, that, on and after the metric evaluation date applicable to the megaproject operator and until the end of the last year for which the megaproject qualifies for the credit authorized under this section, the megaproject operator will compensate the project's employees at an average hourly wage of at least three hundred per cent of the federal minimum wage under 29 U.S.C. 206, exclusive of employee benefits, as determined at the time the tax credit authority approves the project for a credit under this section.

(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:

(a) The supplier sells tangible personal property directly to a megaproject operator of a megaproject that satisfies the criteria described in division (A)(11)(a)(ii) of this section for use at a megaproject site, provided that such property was subject to substantial manufacturing, assembly, or processing in this state at a facility owned or operated by the supplier;

(b) The supplier is not a data center and sells tangible personal property directly to a megaproject operator for use at a megaproject site, provided that the supplier agrees, in an agreement with the tax credit authority under division (D) of this section, to meet all of the following requirements:

(i) By the metric evaluation date applicable to the supplier, makes at least one hundred million dollars, as adjusted under division (V)(2) of this section, in fixed-asset investments in this state;

(ii) By the metric evaluation date applicable to the supplier, creates at least ten million dollars, as adjusted under division (V)(2) of this section, in Ohio employee payroll;

(iii) On and after the metric evaluation date applicable to the supplier, until the end of the last year for which the supplier qualifies for the credit authorized under this section, maintains at least the amount in Ohio employee payroll required under division (A)(13)(b)(ii) of this section for each year in that period.

(14)(a) "Data center" means one or more buildings or physical facilities or infrastructure, located on a single real property parcel or on contiguous, adjacent, or otherwise aggregated real property parcels that are used primarily or exclusively for digital information services such as the management, storage, processing, and dissemination of electronic data and information through the use of computer systems, servers, networking equipment, and related components, including equipment cooling systems, or virtual currency mining.

(b) "Data center" excludes one or more buildings or physical facilities or infrastructure, located on a single real property parcel or on contiguous, adjacent, or otherwise aggregated real property parcels that are used primarily or exclusively for telecommunications.

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

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

An application shall not propose to include both home-based employees and employees who are not home-based employees in the computation of Ohio employee payroll for the purposes of the same tax credit agreement, except that a qualifying work-from-home employee shall not be considered to be a home-based employee unless so designated by the applicant. If a taxpayer or potential taxpayer employs both home-based employees and employees who are not home-based employees in a project, the taxpayer shall submit separate applications for separate tax credit agreements for the project, one of which shall include home-based employees in the computation of Ohio employee payroll and one of which shall include all other employees in the computation of Ohio employee payroll.

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

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

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

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

(2)(a) A taxpayer that chooses to begin the project prior to receiving the determination of the authority may, upon submitting the taxpayer's application to the authority, request that the chief investment officer of the nonprofit corporation formed under section 187.01 of the Revised Code and the director review the taxpayer's application and recommend to the authority that the taxpayer's application be considered. As soon as possible after receiving such a request, the chief investment officer and the director shall review the taxpayer's application and, if they determine that the application warrants consideration by the authority, make that recommendation to the authority not later than six months after the application is received by the authority.

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

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

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

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

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

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

(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;

(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;

(5) The pay increase factor to be applied to the taxpayer's baseline payroll;

(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;

(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.

(8) A provision providing that the taxpayer may not relocate a substantial number of employment positions from elsewhere in this state to the project location unless the director of development determines that the legislative authority of the county, township, or municipal corporation from which the employment positions would be relocated has been notified by the taxpayer of the relocation.

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

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

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

(11) If the taxpayer is a megaproject operator or megaproject supplier, a requirement that the taxpayer meet and

maintain compliance with all thresholds and requirements to which the taxpayer agreed, pursuant to division (A)(11) or (13) of this section, respectively, as a condition of the operator's project qualifying as a megaproject or the supplier qualifying as a megaproject supplier until the end of the last year for which the taxpayer qualifies for the credit authorized under this section. In each year that a megaproject operator or megaproject supplier is subject to an agreement with the tax credit authority under this section and meets the requirements of this division, the director of development shall issue a certificate to the megaproject operator or megaproject supplier stating that the megaproject operator or megaproject supplier continues to meet those requirements.

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

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

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

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

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

(e) The number of employees working at the site of the megaproject and the counties in which those employees reside;

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

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

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

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

following:

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

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

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

(F) Projects that consist solely of point-of-final-purchase retail facilities are not eligible for a tax credit under this section. If a project consists of both point-of-final-purchase retail facilities and nonretail facilities, only the portion of the project consisting of the nonretail facilities is eligible for a tax credit and only the excess payroll from the nonretail facilities shall be considered when computing the amount of the tax credit. If a warehouse facility is part of a point-of-final-purchase retail facility and supplies only that facility, the warehouse facility is not eligible for a tax credit. Catalog distribution centers are not considered point-of-final-purchase retail facilities for the purposes of this division, and are eligible for tax credits under this section.

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

(H) A taxpayer claiming a credit under this section shall submit to the tax commissioner or, if the taxpayer is an insurance company, to the superintendent of insurance, a copy of the director of development's certificate of verification under division (D)(7) of this section with the taxpayer's tax report or return for the taxable year or for the calendar year that includes the tax period. Failure to submit a copy of the certificate with the report or return does not invalidate a claim for a credit if the taxpayer submits a copy of the certificate to the commissioner or superintendent within the time prescribed by section 5703.0510 of the Revised Code or within thirty days after the commissioner or superintendent requests it.

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

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

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

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

(i) If the taxpayer maintained operations at the project location for a period less than or equal to the term of the credit, an amount not exceeding one hundred per cent of the sum of any credits allowed and received under this section;

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

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

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

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

(3) In determining the portion of the tax credit to be refunded to this state, the tax credit authority shall consider the effect of market conditions on the taxpayer's project and whether the taxpayer continues to maintain other operations in this state. After making the determination, the authority shall certify the amount to be refunded to the tax commissioner or

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

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

(M) There is hereby created the tax credit authority, which consists of the director of development and four other members appointed as follows: the governor, the president of the senate, and the speaker of the house of representatives each shall appoint one member who shall be a specialist in economic development; the governor also shall appoint a member who is a specialist in taxation. Terms of office shall be for four years. Each member shall serve on the authority until the end of the term for which the member was appointed. Vacancies shall be filled in the same manner provided for original appointments. Any member appointed to fill a vacancy occurring prior to the expiration of the term for which the member's predecessor was appointed shall hold office for the remainder of that term. Members may be reappointed to the authority. Members of the authority shall receive their necessary and actual expenses while engaged in the business of the authority. The director of development shall serve as chairperson of the authority, and the members annually shall elect a vice-chairperson from among themselves. Three members of the authority constitute a quorum to transact and vote on the business of the authority. The majority vote of the membership of the authority is necessary to approve any such business, including the election of the vice-chairperson.

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

(N) For purposes of the credits granted by this section against the taxes imposed under sections 5725.18 and 5729.03 of the Revised Code, "taxable year" means the period covered by the taxpayer's annual statement to the superintendent of insurance.

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

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

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

(R) Original agreements approved by the tax credit authority under this section in 2014 or 2015 before September 29, 2015, may be revised at the request of the taxpayer to conform with the amendments to this section and sections 5733.0610, 5736.50, 5747.058, and 5751.50 of the Revised Code by H.B. 64 of the 131st general assembly, upon mutual agreement of the taxpayer and the department of development, and approval by the tax credit authority.

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

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

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

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

(3) Except as provided in division (S)(4) of this section, for reporting periods ending in 2015 and thereafter for taxpayers subject to eligible agreements, the tax credit authority shall adjust the income tax revenue reported on the taxpayer's annual report by multiplying the withholding

adjustment factor by the taxpayer's income tax revenue and doing one of the following:

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

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

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

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

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

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

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

(T) For reporting periods ending in calendar year 2020 or thereafter, any taxpayer may include qualifying work-from-home employees in its report required under division (D)(6) of this section, and the compensation of such employees shall qualify as Ohio employee payroll under division (A)(3)(a) of this section, even if the taxpayer's application to the tax credit authority to enter into an agreement for a tax credit under this section was approved before September 29, 2017, the effective date of the amendment of this section by H.B. 49 of the 132nd general assembly.

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

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

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

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

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

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

(d) Round the resulting fixed-asset investment sum to the 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 elected taxpayer or a combined taxpayer as defined in section 5751.01 of the Revised Code.

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

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

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

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

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

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

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

(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) A computer data center with an aggregate monthly maximum demand of greater than two hundred fifty megawatts must offset any consumption from the electrical grid by the data center as required under division (A)(1) 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 122.171 of the Revised Code.

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

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

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

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

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

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

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

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

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

(1) A detailed description of the capital investment

project that is the subject of the agreement, including the amount of the investment, the period over which the investment has been or is being made, the annual compensation to be paid by each taxpayer subject to the agreement to its employees at the project site, and the anticipated amount of income taxes to be withheld from employee compensation pursuant to section 5747.06 of the Revised Code.

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

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

(4) A requirement that, for each year of the term of the agreement beginning on or after the first day of the twenty-

fifth month after the date the agreement was entered into, 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 at the eligible computer data center.

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

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

(7) A provision providing that the taxpayers subject to the agreement may not relocate a substantial number of employment positions from elsewhere in this state to the project site unless the director of development determines that the appropriate taxpayer notified the legislative authority of the county, township, or municipal corporation from which the employment positions would be relocated. For purposes of this paragraph, the movement of an employment position from one political subdivision to another political subdivision shall be considered a relocation of an employment position unless the

movement is confined to the project site. The transfer of an employment position from one political subdivision to another political subdivision shall not be considered a relocation of an employment position if the employment position in the first political subdivision is replaced by another employment position.

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

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

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

(H) Financial statements and other information submitted to the department of development or the tax credit authority by an applicant for or recipient of an exemption under this section, and any information taken for any purpose from such statements or information, are not public records subject to section 149.43 of the Revised Code. However, the chairperson of the authority may make use of the statements and other information for purposes of issuing public reports or in connection with court proceedings concerning tax exemption agreements under this section. Upon the request of the tax commissioner, the chairperson of the authority shall provide to the tax commissioner any statement or other information submitted by an applicant for or recipient of an exemption under this section. The tax commissioner shall preserve the confidentiality of the statement or other information.

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

During the term of an agreement under this section each taxpayer subject to the agreement shall submit to the tax commissioner a return that shows the amount of computer data center equipment purchased for use at the eligible computer data center, the amount of tangible personal property and taxable services other than computer data center equipment purchased for use at the eligible computer data center, the amount of tax under Chapter 5739. or 5741. of the Revised Code that would be due in the absence of the agreement under this section, the exemption percentage for computer data center equipment specified in the agreement, and the amount of tax due under Chapter 5739. or 5741. of the Revised Code as a result of the agreement under this section. Each such taxpayer shall pay the tax shown on the return to be due in the manner and at the times as may be further prescribed by the tax commissioner. Each such taxpayer shall include a copy of the director of development's certificate of verification issued under division (E)(6) of this section. Failure to submit a copy of the certificate with the return does not invalidate the claim for exemption if the taxpayer submits a copy of the certificate to the tax commissioner within the time prescribed by section 5703.0510 of the Revised Code.

(J) If the director of development determines that one or more taxpayers received an exemption from taxes due on the purchase of computer data center equipment purchased for use at a computer data center that no longer complies with the requirement under division (E)(3) of this section, the director shall notify the tax credit authority and, if applicable, the taxpayer that applied to enter the agreement for the exemption under division (C) of this section of the noncompliance. After receiving such a notice, and after giving each taxpayer subject to the agreement an opportunity to explain the noncompliance, the authority may terminate the agreement and require each such taxpayer to pay to the state all or a portion of the taxes that would have been owed in regards to the exempt equipment in previous years, all as determined under rules adopted pursuant to division (K) of this section. In determining the portion of the taxes that would have been owed on the previously exempted equipment to be paid to this state by a taxpayer, the authority shall consider the effect of market conditions on the eligible computer data center, whether the taxpayer continues to maintain other operations in this state, and, with respect to agreements involving multiple taxpayers, the taxpayer's level of responsibility for the noncompliance. After making the determination, the authority shall certify to the tax commissioner the amount to be paid by each taxpayer subject to the agreement. The tax commissioner shall make an assessment for that amount against each such taxpayer under Chapter 5739. or 5741. of the Revised Code. The time limitations on assessments under those chapters do not apply to an assessment under this division, but the tax commissioner shall make the assessment within one year after the date the authority certifies to the tax commissioner the amount to be paid by the taxpayer.

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

(L) On or before the first day of August of each year, the director of development shall submit a report to the governor, the president of the senate, and the speaker of the house of representatives on the tax exemption authorized under this section. The report shall include information on the number of agreements that were entered into under this section during the preceding calendar year, a description of the eligible computer data center that is the subject of each such agreement, and an update on the status of eligible computer data centers under agreements entered into before the preceding calendar year.

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

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

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

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

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

(B) Notwithstanding any terms of the agreement to the contrary, a nondisclosure agreement shall not be construed to prohibit or otherwise limit a public record from being made available under section 149.43 of the Revised Code.

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

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

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

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

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

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

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

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

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

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

(B) The chief shall prepare an annual report that compiles data received in accordance with division (A) of this section from the previous calendar year. The chief shall submit the annual report to the speaker of the house of representatives, the senate president, and the house of representatives and senate committees that consider energy legislation and natural resources legislation within ninety days after preparing such report.

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

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

(2) The consumptive use coefficient for data centers;

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

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

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

Sec. 3745.015. There is hereby created in the state treasury the environmental protection fund consisting of money credited to the fund under division (A)(3) of section 3734.57 ~~and~~, division (E) of section 3714.07, and section 6111.70 of the Revised Code. The environmental protection agency shall use money in the fund to pay the agency's costs associated with administering and enforcing, or otherwise conducting activities under, this chapter and Chapters 3704., 3734., 3746., 3747., 3748., 3750., 3751., 3752., 3753., 5709., 6101., 6103., 6105., 6109., 6111., 6112., 6113., 6115., 6117., and 6119. of the

Revised Code, including providing compliance assistance to small businesses. However, any fees credited to the fund under section 6111.70 of the Revised Code shall be used to pay the agency's costs associated with implementing that section.

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

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

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

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

Sec. 4941.01. As used in this chapter:

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

(B)(1) "Data center" means one or more buildings or physical facilities or infrastructure, located on a single real property parcel or on contiguous, adjacent, or otherwise aggregated real property parcels that are used primarily or exclusively for digital information services such as the management, storage, processing, and dissemination of electronic data and information through the use of computer systems, servers, networking equipment, and related components, including equipment cooling systems, or virtual currency mining.

(2) "Data center" excludes one or more buildings or physical facilities or infrastructure, located on a single real property parcel or on contiguous, adjacent, or otherwise aggregated real property parcels that are used primarily or exclusively for telecommunications.

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

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

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

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

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

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

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

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

Sec. 4941.02. (A) Subject to division (D) of this section, as of the effective date of this section each new data center in this state with an aggregate monthly maximum demand of greater than two hundred fifty megawatts shall be supplied with all of its electricity using either or both of the following sources that must offset any consumption from the electrical grid by the data center:

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

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

(a) Mercantile customer self-power systems;

(b) Customer-generator projects;

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

(d) Purchase power agreements;

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

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

(C) Each data center operator purchasing or causing to be built or upgrades under division (A) of this section shall be equal to or greater than the power to band when multiplying the name plate capacity of the power generation being built or contracted for by the federal energy regulatory commission reliability factor.

Sec. 4941.03. Notwithstanding any provision of the Revised Code to the contrary:

(A) All direct costs associated with providing retail electric service to data centers, including any standard service offer or generation costs, transmission costs, and distribution costs, and costs associated with complying with section 4941.03 of the Revised Code, shall be allocated and recovered solely from data center operators.

(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.

Sec. 4941.04. Notwithstanding any provision of the Revised Code to the contrary:

(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:

(1) Demand percentage;

(2) Collateral;

(3) Term length;

(4) Exit and termination fees;

(5) Any other factors deemed necessary and essential to ensure protection for all other electric service customers in this state.

(B) The commission shall ensure that a tariff under this section complies with section 4941.03 of the Revised Code.

Sec. 4941.05. (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.

(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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(C) Not later than sixty days after the effective date of this section, the director shall adopt rules in accordance with Chapter 119. of the Revised Code establishing a wastewater testing and methodology plan for data centers. Such rules also shall establish a requirement that any person that owns a data center report wastewater quality data in a manner and frequency established by the director.

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

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

(F)(1) The director shall adopt rules in accordance with Chapter 119. of the Revised Code to administer and enforce this section.

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

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

Section 3. (A) The enactment by this act of section 5709.94 of the Revised Code applies to tax exemptions authorized or approved on or after the effective date of this section.

(B) The amendment by this act of sections 122.17 and 122.175 of the Revised Code applies to agreements entered into under that applicable section on or after the effective date of this section.