

AN ACT

To amend sections 3706.01, 5733.98, and 5747.98 and to enact sections 901.13, 1345.021, 5733.46, and 5747.75 of the Revised Code to create the Ethanol Incentive Board, to create a tax credit against corporation franchise or income tax liability for investments in ethanol plants whose business plans have been approved by the Board, to provide that ethanol plants are air quality facilities eligible for Ohio Air Quality Development Authority financing, to declare that it is not an unfair or deceptive consumer sales practice to fail to disclose a blending of ethanol into gasoline, and to declare an emergency.

Be it enacted by the General Assembly of the State of Ohio:

SECTION 1. That sections 3706.01, 5733.98, and 5747.98 be amended and sections 901.13, 1345.021, 5733.46, and 5747.75 of the Revised Code be enacted to read as follows:

Sec. 901.13. (A) As used in this section:

(1) "Ethanol" has the same meaning as in section 5733.46 of the Revised Code.

(2) "Facility" means an ethanol production plant that will be located in this state.

(B) There is hereby created the ethanol incentive board. The board shall consist of the following five members: the director of agriculture, who shall serve as chairperson of the board, the director of development, the executive director of the Ohio air quality development authority, one member appointed by the speaker of the house of representatives, and one member appointed by the president of the senate. Initial appointments to the board shall be made within thirty days of the effective date of this section. Vacancies shall be filled in the same manner provided for original appointments. Members of the board shall serve without compensation. The board shall meet and conduct its business as directed by the chairperson.

The board shall cease to exist January 1, 2014.

(C) The board's sole duty is to review any application that is submitted to it under this section. The board shall approve an application only if it determines, by the affirmative vote of all members of the board, that the applicant's business plan for a facility meets the requirements established by division (D) of this section.

(D) The owner of a facility may apply to the board, on an application provided by the director of agriculture, for approval of the facility's business plan under this section. Within sixty days of receipt of an application, the board shall determine whether the applicant's business plan meets the following requirements:

(1) The business plan is for the construction and operation of a facility.

(2) The business plan contains detailed information regarding:

(a) The availability and price of corn in the area where the facility will be located;

(b) The availability and cost of energy needed for operation of the facility;

(c) The availability of water and waste disposal systems in the area where the facility will be located;

(d) The availability of labor and a qualified site manager for the facility.

(3) The business plan analyzes any proposed marketing agreements for the products produced by the facility.

(4) The facility to be constructed and operated under the business plan is majority-owned by Ohio farmers or will be prior to the first day the facility commences production.

(5) The business plan meets any other requirements established by the board under rules adopted in accordance with division (G) of this section.

The board shall issue a certificate of approval for each application approved under this section, and any taxpayer that invests money in the facility for which a business plan has been approved may claim a tax credit for such investment under section 5733.46 or 5747.75 of the Revised Code.

(E) Any business plan submitted to the board under this section is not a public record subject to section 149.43 of the Revised Code.

(F) The board shall notify the tax commissioner of any certificate of approval issued under this section, within ten days of its issuance.

(G) The director of agriculture, in consultation with the director of development and in accordance with Chapter 119, of the Revised Code, shall adopt rules necessary to implement this section, including rules prescribing procedures and forms for administering this section.

for purposes of section 101.82 to 101.87 of the Revised Code.

Sec. 1345.021. (A) As used in this section, "retail dealer" means a person who owns, operates, controls, or supervises an establishment at which gasoline is sold or offered for sale to the public.

(B) When ethanol is blended or mixed into gasoline that is sold or offered for sale to the public, it is not an unfair or deceptive act or practice in connection with a consumer transaction for a retail dealer to fail to disclose either of the following:

(1) The fact that the gasoline contains ethanol;

(2) The percentage of ethanol that is contained in the gasoline.

(C) If a retail dealer elects to disclose any of the information specified in division (B) of this section, the dealer may make that disclosure in any form, using any type of sign or label and any size or style of letters, at the retail dealer's discretion.

(D) A retail dealer shall not be required to disclose the fact that gasoline contains ethanol and shall not be required to disclose the percentage of ethanol in the gasoline by any law, rule, resolution, or ordinance of any agency or department of the state or any political subdivision of the state.

Sec. 3706.01. As used in this chapter:

(A) "Governmental agency" means a department, division, or other unit of state government, a municipal corporation, county, township, and other political subdivision, or any other public corporation or agency having the power to acquire, construct, or operate air quality facilities, the United States or any agency thereof, and any agency, commission, or authority established pursuant to an interstate compact or agreement.

(B) "Person" means any individual, firm, partnership, association, or corporation, or any combination thereof.

(C) "Air contaminant" means particulate matter, dust, fumes, gas, mist, smoke, noise, vapor, heat, radioactivity, radiation, or odorous substance, or any combination thereof.

(D) "Air pollution" means the presence in the ambient air of one or more air contaminants in sufficient quantity and of such characteristics and duration as to injure human health or welfare, plant or animal life, or property, or that unreasonably interferes with the comfortable enjoyment of life or property.

(E) "Ambient air" means that portion of the atmosphere outside of buildings and other enclosures, stacks, or ducts that surrounds human, plant, or animal life, or property.

(F) "Emission" means the release into the outdoor atmosphere of an air contaminant.

(G) "Air quality facility" means any of the following:

(1) Any method, modification or replacement of property, process, device, structure, or equipment that removes, reduces, prevents, contains, alters, conveys, stores, disperses, or disposes of air contaminants or substances containing air contaminants, or that renders less noxious or reduces the concentration of air contaminants in the ambient air, including, without limitation, facilities and expenditures that qualify as air pollution control facilities under section 103 (C)(4)(F) of the Internal Revenue Code of 1954, as amended, and regulations adopted thereunder, ~~motor~~;

(2) Motor vehicle inspection stations operated in accordance with, and any equipment used for motor vehicle inspections conducted under, section 3704.14 of the Revised Code and rules adopted under it, ~~any~~;

(3) Ethanol or other biofuel facilities, including any equipment used at the ethanol or other biofuel facility for the production of ethanol or other biofuels;

(4) Any property or portion thereof used for the collection, storage, treatment, utilization, processing, or final disposal of solid waste resulting from any method, process, device, structure, or equipment that removes, reduces, prevents, contains, alters, conveys, stores, disperses, or disposes of air contaminants, or that renders less noxious or reduces the concentration of air contaminants in the ambient air, ~~and any~~;

(5) Any property, device, or equipment that promotes the reduction of emissions of air contaminants into the ambient air through improvements in the efficiency of energy utilization or energy conservation, ~~and~~.

"Air quality facility" further ~~including~~ includes any property or system to be used in whole or in part for any of ~~such~~ the purposes in divisions (G)(1) to (5) of this section, whether another purpose is also served, and any property or system incidental to or ~~which~~ that has to do with, or the end purpose of which is, any of the foregoing. Air quality facilities that are defined in this division for industry, commerce, distribution, or research, including public utility companies, are hereby determined to be those ~~which~~ that qualify as facilities for the control of air pollution and thermal pollution related to air under Section 13 of Article VIII, Ohio Constitution.

(H) "Project" or "air quality project" means any air quality facility, including undivided or other interests therein, acquired or to be acquired or constructed or to be constructed by the Ohio air quality development authority under this chapter, or acquired or to be acquired or constructed or to be constructed by a governmental agency or person with all or a part of the cost thereof being paid from a loan or grant from the authority under this chapter, including all buildings and facilities that the authority determines

necessary for the operation of the project, together with all property, rights, easements, and interests that may be required for the operation of the project.

(I) "Cost" as applied to an air quality project means the cost of acquisition and construction, the cost of acquisition of all land, rights-of-way, property rights, easements, franchise rights, and interests required for such acquisition and construction, the cost of demolishing or removing any buildings or structures on land so acquired, including the cost of acquiring any lands to which such buildings or structures may be moved, the cost of acquiring or constructing and equipping a principal office and sub-offices of the authority, the cost of diverting highways, interchange of highways, and access roads to private property, including the cost of land or easements for such access roads, the cost of public utility and common carrier relocation or duplication, the cost of all machinery, furnishings, and equipment, financing charges, interest prior to and during construction and for no more than eighteen months after completion of construction, engineering, expenses of research and development with respect to air quality facilities, legal expenses, plans, specifications, surveys, studies, estimates of cost and revenues, working capital, other expenses necessary or incident to determining the feasibility or practicability of acquiring or constructing such project, administrative expense, and such other expense as may be necessary or incident to the acquisition or construction of the project, the financing of such acquisition or construction, including the amount authorized in the resolution of the authority providing for the issuance of air quality revenue bonds to be paid into any special funds from the proceeds of such bonds, and the financing of the placing of such project in operation. Any obligation, cost, or expense incurred by any governmental agency or person for surveys, borings, preparation of plans and specifications, and other engineering services, or any other cost described above, in connection with the acquisition or construction of a project may be regarded as a part of the cost of that project and may be reimbursed out of the proceeds of air quality revenue bonds as authorized by this chapter.

(J) "Owner" includes an individual, copartnership, association, or corporation having any title or interest in any property, rights, easements, or interests authorized to be acquired by this chapter.

(K) "Revenues" means all rentals and other charges received by the authority for the use or services of any air quality project, any gift or grant received with respect to any air quality project, any moneys received with respect to the lease, sublease, sale, including installment sale or conditional sale, or other disposition of an air quality project, moneys received in

repayment of and for interest on any loans made by the authority to a person or governmental agency, whether from the United States or any department, administration, or agency thereof, or otherwise, proceeds of such bonds to the extent that use thereof for payment of principal of, premium, if any, or interest on the bonds is authorized by the authority, proceeds from any insurance, condemnation, or guaranty pertaining to a project or property mortgaged to secure bonds or pertaining to the financing of the project, and income and profit from the investment of the proceeds of air quality revenue bonds or of any revenues.

(L) "Public roads" includes all public highways, roads, and streets in the state, whether maintained by the state, county, city, township, or other political subdivision.

(M) "Public utility facilities" includes tracks, pipes, mains, conduits, cables, wires, towers, poles, and other equipment and appliances of any public utility.

(N) "Construction," unless the context indicates a different meaning or intent, includes reconstruction, enlargement, improvement, or providing furnishings or equipment.

(O) "Air quality revenue bonds," unless the context indicates a different meaning or intent, includes air quality revenue notes, air quality revenue renewal notes, and air quality revenue refunding bonds, except that notes issued in anticipation of the issuance of bonds shall have a maximum maturity of five years as provided in section 3706.05 of the Revised Code and notes or renewal notes issued as the definitive obligation may be issued maturing at such time or times with a maximum maturity of forty years from the date of issuance of the original note.

(P) "Solid waste" means any garbage; refuse; sludge from a waste water treatment plant, water supply treatment plant, or air pollution control facility; and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining, and agricultural operations, and from community activities, but not including solid or dissolved material in domestic sewage, or solid or dissolved material in irrigation return flows or industrial discharges that are point sources subject to permits under section 402 of the "Federal Water Pollution Control Act Amendments of 1972," 86 Stat. 880, 33 U.S.C.A. 1342, as amended, or source, special nuclear, or byproduct material as defined by the "Atomic Energy Act of 1954," 68 Stat. 921, 42 U.S.C.A. 2011, as amended.

(Q) "Sludge" means any solid, semisolid, or liquid waste, other than a recyclable byproduct, generated from a municipal, commercial, or industrial

waste water treatment plant, water supply plant, or air pollution control facility or any other such wastes having similar characteristics and effects.

(R) "Ethanol or other biofuel facility" means a plant at which ethanol or other biofuel is produced.

(S) "Ethanol" means fermentation ethyl alcohol derived from agricultural products, including potatoes, cereal, grains, cheese whey, and sugar beets; forest products; or other renewable or biomass resources, including residue and waste generated from the production, processing, and marketing of agricultural products, forest products, and other renewable or biomass resources, that meets all of the specifications in the American society for testing and materials (ASTM) specification D 4806-88 and is denatured as specified in Parts 20 and 21 of Title 27 of the Code of Federal Regulations.

(T) "Biofuel" means any fuel that is made from cellulosic biomass resources, including renewable organic matter, crop waste residue, wood, aquatic plants and other crops, animal waste, solid waste, or sludge, and that is used for the production of energy for transportation or other purposes.

Sec. 5733.46. (A) As used in this section:

(1) "Ethanol" means fermentation ethyl alcohol derived from agricultural products, including potatoes, cereal, grains, cheese whey, and sugar beets; forest products; or other renewable resources, including residue and waste generated from the production, processing, and marketing of agricultural products, forest products, and other renewable resources that meet all of the specifications in the American society for testing and materials (ASTM) specification D 4806-88 and is denatured as specified in Parts 20 and 21 of Title 27 of the Code of Federal Regulations.

(2) "Certified ethanol plant" means a facility at which ethanol is produced and for which a certificate has been issued under section 901.13 of the Revised Code.

(3) "Money" means United States currency, or a check, draft, or cashier's check for United States currency, payable on demand and drawn on a bank.

(B) Beginning in tax year 2003 and ending in tax year 2013, there is hereby allowed a nonrefundable credit against the tax imposed by section 5733.06 of the Revised Code for a taxpayer that invests money in a certified ethanol plant. The amount of the credit equals fifty per cent of the money the taxpayer invests in the plant, but the credit amount shall not exceed five thousand dollars per taxpayer per certified ethanol plant regardless of the number of years in which the taxpayer makes investments. The credit shall be claimed in the tax year immediately following the calendar year in which

the investment was made.

(C) The taxpayer shall claim the credit in the order required by section 5733.98 of the Revised Code. Any credit amount in excess of the tax due under section 5733.06 of the Revised Code, after allowing for any other credits preceding the credit in that order, may be carried forward for three tax years, but the amount of the excess credit allowed in any such year shall be deducted from the balance carried forward to the next year.

(D) The tax commissioner may require that the taxpayer furnish information as is necessary to support the claim for the credit under this section, and no credit shall be allowed unless the information is provided.

Sec. 5733.98. (A) To provide a uniform procedure for calculating the amount of tax imposed by section 5733.06 of the Revised Code that is due under this chapter, a taxpayer shall claim any credits to which it is entitled in the following order, except as otherwise provided in section 5733.058 of the Revised Code:

(1) The credit for taxes paid by a qualifying pass-through entity allowed under section 5733.0611 of the Revised Code;

(2) The credit allowed for financial institutions under section 5733.45 of the Revised Code;

(3) The credit for qualifying affiliated groups under section 5733.068 of the Revised Code;

(4) The subsidiary corporation credit under section 5733.067 of the Revised Code;

(5) The savings and loan assessment credit under section 5733.063 of the Revised Code;

(6) The credit for recycling and litter prevention donations under section 5733.064 of the Revised Code;

(7) The credit for employers that enter into agreements with child day-care centers under section 5733.36 of the Revised Code;

(8) The credit for employers that reimburse employee child day-care expenses under section 5733.38 of the Revised Code;

(9) The credit for maintaining railroad active grade crossing warning devices under section 5733.43 of the Revised Code;

(10) The credit for purchases of lights and reflectors under section 5733.44 of the Revised Code;

(11) The job retention credit under division (B) of section 5733.0610 of the Revised Code;

(12) The credit for manufacturing investments under section 5733.061 of the Revised Code;

(13) The credit for purchases of new manufacturing machinery and

equipment under section 5733.31 or section 5733.311 of the Revised Code;

(14) The second credit for purchases of new manufacturing machinery and equipment under section 5733.33 of the Revised Code;

(15) The job training credit under section 5733.42 of the Revised Code;

(16) The credit for qualified research expenses under section 5733.351 of the Revised Code;

(17) The enterprise zone credit under section 5709.66 of the Revised Code;

(18) The credit for the eligible costs associated with a voluntary action under section 5733.34 of the Revised Code;

(19) The credit for employers that establish on-site child day-care under section 5733.37 of the Revised Code;

(20) The ethanol plant investment credit under section 5733.46 of the Revised Code;

(21) The credit for purchases of qualifying grape production property under section 5733.32 of the Revised Code;

~~(21)~~(22) The export sales credit under section 5733.069 of the Revised Code;

~~(22)~~(23) The credit for research and development and technology transfer investors under section 5733.35 of the Revised Code;

~~(23)~~(24) The enterprise zone credits under section 5709.65 of the Revised Code;

~~(24)~~(25) The credit for using Ohio coal under section 5733.39 of the Revised Code;

~~(25)~~(26) The refundable jobs creation credit under division (A) of section 5733.0610 of the Revised Code.

(B) For any credit except the refundable jobs creation credit, the amount of the credit for a tax year shall not exceed the tax due after allowing for any other credit that precedes it in the order required under this section. Any excess amount of a particular credit may be carried forward if authorized under the section creating that credit.

Sec. 5747.75. (A) As used in this section:

(1) "Ethanol" means fermentation ethyl alcohol derived from agricultural products, including potatoes, cereal, grains, cheese whey, and sugar beets; forest products; or other renewable resources, including residue and waste generated from the production, processing, and marketing of agricultural products, forest products, and other renewable resources that meet all of the specifications in the American society for testing and materials (ASTM) specification D 4806-88 and is denatured as specified in Parts 20 and 21 of Title 27 of the Code of Federal Regulations.

(2) "Certified ethanol plant" means a facility at which ethanol is produced and for which a certificate has been issued under section 901.13 of the Revised Code.

(3) "Money" means United States currency, or a check, draft, or cashier's check for United States currency, payable on demand and drawn on a bank.

(B) Beginning in taxable year 2002 and ending in taxable year 2012, there is hereby allowed a nonrefundable credit against the tax imposed by section 5747.02 of the Revised Code for a taxpayer that invests money in a certified ethanol plant. The amount of the credit equals fifty per cent of the money the taxpayer invests in the plant, but the credit amount shall not exceed five thousand dollars per taxpayer per certified ethanol plant regardless of the number of years in which the taxpayer makes investments. The credit shall be claimed for the taxable year during which the investment was made.

(C) The taxpayer shall claim the credit in the order required by section 5747.98 of the Revised Code. Any credit amount in excess of the tax due under section 5747.02 of the Revised Code, after allowing for any other credits preceding the credit in that order, may be carried forward for three taxable years, but the amount of the excess credit allowed in any such year shall be deducted from the balance carried forward to the next year.

(D) If the taxpayer is a direct or indirect investor in a pass-through entity that has made an investment under this section, the taxpayer may claim its proportionate or distributive share of the credit allowed under this section.

(E) The tax commissioner may require that the taxpayer furnish information as is necessary to support the claim for the credit under this section, and no credit shall be allowed unless the information is provided.

Sec. 5747.98. (A) To provide a uniform procedure for calculating the amount of tax due under section 5747.02 of the Revised Code, a taxpayer shall claim any credits to which the taxpayer is entitled in the following order:

(1) The retirement income credit under division (B) of section 5747.055 of the Revised Code;

(2) The senior citizen credit under division (C) of section 5747.05 of the Revised Code;

(3) The lump sum distribution credit under division (D) of section 5747.05 of the Revised Code;

(4) The dependent care credit under section 5747.054 of the Revised Code;

(5) The lump sum retirement income credit under division (C) of section 5747.055 of the Revised Code;

(6) The lump sum retirement income credit under division (D) of section 5747.055 of the Revised Code;

(7) The lump sum retirement income credit under division (E) of section 5747.055 of the Revised Code;

(8) The credit for displaced workers who pay for job training under section 5747.27 of the Revised Code;

(9) The campaign contribution credit under section 5747.29 of the Revised Code;

(10) The twenty-dollar personal exemption credit under section 5747.022 of the Revised Code;

(11) The joint filing credit under division (G) of section 5747.05 of the Revised Code;

(12) The nonresident credit under division (A) of section 5747.05 of the Revised Code;

(13) The credit for a resident's out-of-state income under division (B) of section 5747.05 of the Revised Code;

(14) The credit for employers that enter into agreements with child day-care centers under section 5747.34 of the Revised Code;

(15) The credit for employers that reimburse employee child day-care expenses under section 5747.36 of the Revised Code;

(16) The credit for adoption of a minor child under section 5747.37 of the Revised Code;

(17) The credit for purchases of lights and reflectors under section 5747.38 of the Revised Code;

(18) The job retention credit under division (B) of section 5747.058 of the Revised Code;

(19) The credit for manufacturing investments under section 5747.051 of the Revised Code;

(20) The credit for purchases of new manufacturing machinery and equipment under section 5747.26 or section 5747.261 of the Revised Code;

(21) The second credit for purchases of new manufacturing machinery and equipment and the credit for using Ohio coal under section 5747.31 of the Revised Code;

(22) The job training credit under section 5747.39 of the Revised Code;

(23) The enterprise zone credit under section 5709.66 of the Revised Code;

(24) The credit for the eligible costs associated with a voluntary action under section 5747.32 of the Revised Code;

(25) The credit for employers that establish on-site child day-care centers under section 5747.35 of the Revised Code;

(26) The ethanol plant investment credit under section 5747.75 of the Revised Code;

(27) The credit for purchases of qualifying grape production property under section 5747.28 of the Revised Code;

~~(27)~~(28) The export sales credit under section 5747.057 of the Revised Code;

~~(28)~~(29) The credit for research and development and technology transfer investors under section 5747.33 of the Revised Code;

~~(29)~~(30) The enterprise zone credits under section 5709.65 of the Revised Code;

~~(30)~~(31) The refundable jobs creation credit under division (A) of section 5747.058 of the Revised Code;

~~(31)~~(32) The refundable credit for taxes paid by a qualifying entity granted under section 5747.059 of the Revised Code;

~~(32)~~(33) The refundable credits for taxes paid by a qualifying pass-through entity granted under division (J) of section 5747.08 of the Revised Code.

(B) For any credit, except the refundable credits enumerated in divisions (A)~~(30)~~, (31), ~~and~~ (32), and (33) of this section and the credit granted under division (I) of section 5747.08 of the Revised Code, the amount of the credit for a taxable year shall not exceed the tax due after allowing for any other credit that precedes it in the order required under this section. Any excess amount of a particular credit may be carried forward if authorized under the section creating that credit. Nothing in this chapter shall be construed to allow a taxpayer to claim, directly or indirectly, a credit more than once for a taxable year.

SECTION 2. That existing sections 3706.01, 5733.98, and 5747.98 of the Revised Code are hereby repealed.

SECTION 3. This act is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, and safety. The reason for such necessity is that the act is vital to stimulating the state's economy and to promoting its number one industry, agriculture. It is imperative that it take effect in time for the spring planting season. Therefore, this act shall go into immediate effect.

Speaker _____ of the House of Representatives.

President _____ of the Senate.

Passed _____, 20____

Approved _____, 20____

Governor.

The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

Director, Legislative Service Commission.

Filed in the office of the Secretary of State at Columbus, Ohio, on the ___ day of _____, A. D. 20____.

Secretary of State.

File No. _____ Effective Date _____