

**As Reported by the House Finance and Appropriations
Committee**

**124th General Assembly
Regular Session
2001-2002**

Sub. H. B. No. 405

REPRESENTATIVES Peterson, Schmidt, Clancy

A B I L L

To amend sections 183.02, 1309.528, 5111.872,	1
5123.043, 5123.046, 5123.048, 5123.049, 5123.0411,	2
5126.01, 5126.02, 5126.021, 5126.033, 5126.035,	3
5126.036, 5126.042, 5126.046, 5126.05, 5126.054,	4
5126.055, 5126.06, 5126.14, 5126.15, 5126.17,	5
5126.18, 5126.19, 5126.221, 5126.357, 5705.44,	6
5733.04, 5733.042, 5733.055, 5739.01, 5739.02,	7
5741.01, 5743.05, 5747.01, and 5747.02; to amend,	8
for the purpose of adopting a new section number as	9
indicated in parentheses, section 5126.056	10
(5126.057); and to enact new section 5126.056 and	11
section 5733.043 of the Revised Code and to amend	12
Sections 63.25, 74.01, 74.02, 104, and 140 of Am.	13
Sub. H.B. 94 of the 124th General Assembly, to	14
amend Section 41.10 of Am. Sub. H.B. 94 of the	15
124th General Assembly, as subsequently amended, to	16
amend Section 10 of Am. Sub. S.B. 192 of the 123rd	17
General Assembly, and to amend Section 9 of Am.	18
Sub. S.B. 192 of the 123rd General Assembly, as	19
subsequently amended, to revise provisions of Am.	20
Sub. H.B. 94 of the 124th General Assembly	21
regarding services for persons with mental	22
retardation or other developmental disabilities, to	23
revise the law governing membership of county	24

boards of mental retardation and developmental 25
disabilities, to suspend the net operating loss 26
deduction and expand the add-back of certain 27
expenses paid to related members under the 28
corporate franchise tax, to eliminate certain 29
exemptions under the sales tax, to tax certain 30
trust income, to modify Local Government Fund and 31
Tobacco Master Settlement Agreement Fund 32
distributions, to expand the uses of the Corporate 33
and Uniform Commercial Code Filing Fund, to revise 34
provisions of the TANF Housing Program within the 35
Department of Development, to authorize transfers 36
from the Budget Stabilization fund to the General 37
Revenue Fund, to make corrections, and to make 38
appropriations. 39

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

Section 1. That sections 183.02, 1309.528, 5111.872, 40
5123.043, 5123.046, 5123.048, 5123.049, 5123.0411, 5126.01, 41
5126.02, 5126.021, 5126.033, 5126.035, 5126.036, 5126.042, 42
5126.046, 5126.05, 5126.054, 5126.055, 5126.06, 5126.14, 5126.15, 43
5126.17, 5126.18, 5126.19, 5126.221, 5126.357, 5705.44, 5733.04, 44
5733.042, 5733.055, 5739.01, 5739.02, 5741.01, 5743.05, 5747.01, 45
and 5747.02 be amended, section 5126.056 (5126.057) be amended for 46
the purpose of adopting a new section number as indicated in 47
parentheses, and new section 5126.056 and section 5733.043 of the 48
Revised Code be enacted to read as follows: 49

Sec. 183.02. This section's references to years mean state 50
fiscal years. 51

All payments received by the state pursuant to the tobacco 52

master settlement agreement shall be deposited into the state
treasury to the credit of the tobacco master settlement agreement
fund, which is hereby created. All investment earnings of the fund
shall also be credited to the fund. Except as provided in division
(I) of this section, payments and interest credited to the fund
shall be transferred by the director of budget and management as
follows:

(A)(1) Of the first payment credited to the tobacco master
settlement agreement fund in 2000 and the net amounts credited to
the fund annually from 2000 to 2006 and in 2012, the following
amount or percentage shall be transferred to the tobacco use
prevention and cessation trust fund, created in section 183.03 of
the Revised Code:

YEAR	AMOUNT OR PERCENTAGE
2000 (first payment credited)	\$104,855,222.85
2000 (net amount credited)	70.30%
2001	62.84
2002	61.41
2003	63.24
2004	66.65
2005	66.24
2006	65.97
2012	56.01

(2) Of the net amounts credited to the tobacco master
settlement agreement fund in 2013, the director shall transfer to
the tobacco use prevention and cessation trust fund the amount not
transferred to the tobacco use prevention and cessation trust fund
from the net amounts credited to the tobacco master settlement
agreement fund in 2002 due to H.B. No. 405 of the 124th general
assembly. Of the net amounts credited to the tobacco master
settlement agreement fund in 2014, the director shall transfer to

the tobacco use prevention and cessation trust fund the amount not 84
transferred to the tobacco use prevention and cessation trust fund 85
from the net amounts credited to the tobacco master settlement 86
agreement fund in 2003 due to H.B. No. 405 of the 124th general 87
assembly. 88

(B) Of the first payment credited to the tobacco master 89
settlement agreement fund in 2000 and the net amounts credited to 90
the fund annually in 2000 and 2001, the following amount or 91
percentage shall be transferred to the law enforcement 92
improvements trust fund, created in section 183.10 of the Revised 93
Code: 94

YEAR	AMOUNT OR	
	PERCENTAGE	
2000 (first payment credited)	\$10,000,000	96
2000 (net amount credited)	5.41%	97
2001	2.32	98

(C) Of the first payment credited to the tobacco master 99
settlement agreement fund in 2000 and the net amounts credited to 100
the fund annually from 2000 to 2011, the following percentages 101
shall be transferred to the southern Ohio agricultural and 102
community development trust fund, created in section 183.11 of the 103
Revised Code: 104

YEAR	PERCENTAGE	
2000 (first payment credited)	5.00%	106
2000 (net amount credited)	8.73	107
2001	8.12	108
2002	9.18	109
2003	8.91	110
2004	7.84	111
2005	7.79	112
2006	7.76	113
2007	17.39	114

2008 through 2011 17.25 115

(D) The following percentages of the net amounts credited to 116
the tobacco master settlement agreement fund annually shall be 117
transferred to Ohio's public health priorities trust fund, created 118
in section 183.18 of the Revised Code: 119

YEAR	PERCENTAGE	
2000	5.41	120
2001	6.68	121
2002	6.79	122
2003	6.90	123
2004	7.82	124
2005	8.18	125
2006	8.56	126
2007	19.83	127
2008	19.66	128
2009	20.48	129
2010	21.30	130
2011	22.12	131
2012	10.47	132

(E) The following percentages of the net amounts credited to 134
the tobacco master settlement agreement fund annually shall be 135
transferred to the biomedical research and technology transfer 136
trust fund, created in section 183.19 of the Revised Code: 137

YEAR	PERCENTAGE	
2000	2.71	138
2001	14.03	139
2002	13.29	140
2003	12.73	141
2004	13.78	142
2005	14.31	143
2006	14.66	144
2007	49.57	145

2008 to 2011	45.06	147
2012	18.77	148

(F) Of the amounts credited to the tobacco master settlement agreement fund annually, the following amounts shall be transferred to the education facilities trust fund, created in section 183.26 of the Revised Code:

YEAR	AMOUNT	
2000	\$133,062,504.95	154
2001	128,938,732.73	155
2002	185,804,475.78	156
2003	180,561,673.11	157
2004	122,778,219.49	158
2005	121,389,325.80	159
2006	120,463,396.67	160
2007	246,389,369.01	161
2008 to 2011	267,531,291.85	162
2012	110,954,545.28	163

(G) Of the amounts credited to the tobacco master settlement agreement fund annually, from 2000 to 2012 five million dollars per year shall be transferred to the education facilities endowment fund, created in section 183.27 of the Revised Code. From 2013 to 2025, the following percentages of the amounts credited to the tobacco master settlement agreement fund annually shall be transferred to the endowment fund:

YEAR	PERCENTAGE	
2013	30.22	172
2014	33.36	173
2015 to 2025	40.90	174

(H) The following percentages of the net amounts credited to the tobacco master settlement agreement fund annually shall be transferred to the education technology trust fund, created in section 183.28 of the Revised Code:

YEAR	PERCENTAGE	
		179
2000	7.44	180
2001	6.01	181
2002	9.33	182
2003	8.22	183
2004	3.91	184
2005	3.48	185
2006	3.05	186
2007	13.21	187
2008	18.03	188
2009	17.21	189
2010	16.39	190
2011	15.57	191
2012	14.75	192

(I) If in any year from 2001 to 2012 the payments and interest credited to the tobacco master settlement agreement fund during the year amount to less than the amounts required to be transferred to the education facilities trust fund and the education facilities endowment fund that year, the director of budget and management shall make none of the transfers required by divisions (A) to (H) of this section.

(J) If in any year from 2000 to 2025 the payments credited to the tobacco master settlement agreement fund during the year exceed the following amounts, the director of budget and management shall transfer the excess to the income tax reduction fund, created in section 131.44 of the Revised Code:

YEAR	AMOUNT	
		205
2000	\$443,892,767.51	206
2001	348,780,049.22	207
2002	418,783,038.09	208
2003	422,746,368.61	209
2004	352,827,184.57	210

2005	352,827,184.57	211
2006	352,827,184.57	212
2007	352,827,184.57	213
2008 to 2017	383,779,323.15	214
2018 to 2025	403,202,282.16	215

Sec. ~~1309.401~~ 1309.528. (A) All fees collected by the 216
secretary of state for filings under Title XIII or XVII of the 217
Revised Code shall be deposited into the state treasury to the 218
credit of the corporate and uniform commercial code filing fund, 219
which is hereby created. All moneys credited to the fund, subject 220
to division (B) of this section, shall be used ~~only~~ for the 221
purpose of paying for the operations of the office of the 222
secretary of state, ~~other than the division of elections,~~ and for 223
the purpose of paying for expenses relating to the processing of 224
filings under Title XIII or XVII of the Revised Code. 225

(B) ~~The secretary of state business technology fund~~ There is 226
hereby created in the state treasury the secretary of state 227
business technology fund. One per cent of the money credited to 228
the corporate and uniform commercial code filing fund created in 229
division (A) of this section shall be transferred to the credit of 230
this fund. All moneys credited to this fund shall be used only for 231
the upkeep, improvement, or replacement of equipment, or for the 232
purpose of training employees in the use of equipment, used to 233
conduct business of the secretary of state's office under Title 234
XIII or XVII of the Revised Code. 235

Sec. 5111.872. When the department of mental retardation and 236
developmental disabilities allocates enrollment numbers to a 237
county board of mental retardation and developmental disabilities 238
for home and community-based services provided under the component 239
of the medicaid program that the department administers under 240
section 5111.871 of the Revised Code, the department shall 241

consider all of the following: 242

(A) The number of individuals with mental retardation or 243
other developmental disability who are on a waiting list the 244
county board establishes under division (C) of section 5126.042 of 245
the Revised Code for those services and are given priority on the 246
waiting list pursuant to division (D) of that section; 247

(B) The implementation component required by division 248
(A)~~(3)~~(4) of section 5126.054 of the Revised Code of the county 249
board's plan approved under section 5123.046 of the Revised Code; 250

(C) Anything else the department considers necessary to 251
enable county boards to provide those services to individuals in 252
accordance with the priority requirements of ~~division~~ divisions 253
(D) and (E) of section 5126.042 of the Revised Code. 254

Sec. 5123.043. (A) The director of mental retardation and 255
developmental disabilities shall adopt rules establishing 256
procedures for administrative resolution of complaints filed under 257
division (B) of this section and section 5126.06 of the Revised 258
Code. The rules shall be adopted in accordance with Chapter 119. 259
of the Revised Code. 260

(B) Except as provided in division (C) of this section, any 261
person who or county board of mental retardation and developmental 262
disabilities that has a complaint involving any of the programs, 263
services, policies, or administrative practices of the department 264
of mental retardation and developmental disabilities or any of the 265
entities under contract with the department, may file a complaint 266
with the department. Prior to commencing a civil action regarding 267
the complaint, a person or county board shall attempt to have the 268
complaint resolved through the administrative resolution process 269
established in the rules adopted under this section. After 270
exhausting the administrative resolution process, the person or 271
county board may commence a civil action if the complaint is not 272

settled to the person's or county board's satisfaction. 273

(C) An employee of the department may not file under this 274
section a complaint related to the terms and conditions of 275
employment for the employee. 276

(D) This section does not apply to a conflict between a 277
county board of mental retardation and developmental disabilities 278
and a person or government entity that provides or seeks to 279
provide services to an individual with mental retardation or other 280
developmental disability. Section 5126.036 of the Revised Code 281
applies to such a conflict. 282

Sec. 5123.046. The department of mental retardation and 283
developmental disabilities shall review each component of the 284
three-calendar year plan it receives from a county board of mental 285
retardation and developmental disabilities under section 5126.054 286
of the Revised Code and, in consultation with the department of 287
job and family services and office of budget and management, 288
approve each plan component that includes all the information and 289
conditions specified in that section. ~~A~~ The fourth component of 290
the plan shall be approved or disapproved not later than 291
forty-five days after the ~~last of the plan's components are~~ fourth 292
component is submitted to the department under division (B)(3) of 293
section 5126.054 of the Revised Code. If the department approves 294
all four components of the plan, the plan is approved. Otherwise, 295
the plan is disapproved. If the plan is disapproved, the 296
department shall take action against the county board under 297
division (B) of section 5126.056 of the Revised Code. 298

In approving plans under this section, the department shall 299
ensure that the aggregate of all plans provide for the increased 300
enrollment into home and community-based services during each 301
state fiscal year of at least five hundred individuals who did not 302
receive residential services, supported living, or home and 303

community-based services the prior state fiscal year if the 304
department has enough additional enrollment available for this 305
purpose. 306

~~If a county board fails to submit all the components of the 307
plan to the department within the time required by division (B) of 308
section 5126.054 of the Revised Code or the department disapproves 309
a county board's plan, the department may withhold all or part of 310
any funds the department would otherwise allocate to the county 311
board. The department may not withhold any funds the department 312
allocates to the county board prior to the date the last of the 313
plan's components are due or the department disapproves the plan. 314~~

The department shall establish protocols that the department 315
shall use to determine whether a county board is complying with 316
the programmatic and financial accountability mechanisms and 317
achieving outcomes specified in its approved plan. If the 318
department determines that a county board is not in compliance 319
with the mechanisms or achieving the outcomes specified in its 320
approved plan, the department may take action under division (G) 321
of section 5126.055 of the Revised Code. 322

Sec. 5123.048. (A) For state fiscal year 2002, the department 323
of mental retardation and developmental disabilities shall assign 324
to a county board of mental retardation and developmental 325
disabilities the nonfederal share of medicaid expenditures for 326
habilitation center services that a private habilitation center 327
provides if all of the following apply: 328

(1) The individuals who receive the services also received 329
the services from the center pursuant to a contract the center had 330
with the department in state fiscal year 2001; 331

(2) The county board determined under section 5126.041 of the 332
Revised Code that the individuals who receive the services are 333
eligible for county board services; 334

(3) The county board contracts with the center to provide the 335
services after the center's contract with the department ends. 336

(B) The department shall also make the assignment under 337
division (A) of this section for each successive state fiscal year 338
that the county board contracts with the private habilitation 339
center to provide the habilitation center services to the 340
individuals who received the services pursuant to the contract the 341
department had with the center in state fiscal year 2001. 342

(C) The amount the department shall assign under divisions 343
(A) and (B) of this section shall ~~be adequate to ensure that the~~ 344
~~habilitation center services the individuals receive are~~ 345
~~comparable in scope to the habilitation center services they~~ 346
~~received when the private habilitation center was under contract~~ 347
~~with the department. The amount that the department assigns shall~~ 348
not be less than the amount the department paid the private 349
habilitation center for the individuals under each individual who 350
received the habilitation center services pursuant to the contract 351
the department had with the center in fiscal year 2001. If the 352
contract the department had with the private habilitation center 353
in fiscal year 2001 was for less than the entire fiscal year, the 354
amount the department shall assign shall be not less than the 355
amount the department would have paid the center for each 356
individual who received the services pursuant to the contract had 357
the contract been for the entire fiscal year. 358

(D) A county board shall use the assignment it receives under 359
divisions (A) and (B) of this section to pay the nonfederal share 360
of the medicaid expenditures for the habilitation center services 361
the county board is required by division (D) of section 5111.041 362
of the Revised Code to pay. 363

Sec. 5123.049. The director of mental retardation and 364
developmental disabilities shall adopt rules in accordance with 365

Chapter 119. of the Revised Code governing the authorization and 366
payment of home and community-based services, medicaid case 367
management services, and habilitation center services. The rules 368
shall provide for private providers of the services to receive one 369
hundred per cent of the medicaid allowable payment amount and for 370
government providers of the services to receive the federal share 371
of the medicaid allowable payment, less the amount withheld as a 372
fee under section 5123.0412 of the Revised Code and any amount 373
that may be required by rules adopted under section 5123.0413 of 374
the Revised Code to be deposited into the state MR/DD risk fund. 375
The rules shall establish the process by which county boards of 376
mental retardation and developmental disabilities shall certify 377
and provide the nonfederal share of medicaid expenditures that the 378
county board is required by division (A) of section ~~5126.056~~ 379
5126.057 of the Revised Code to pay. The process shall require a 380
county board to certify that the county board has funding 381
available at one time for two months costs for those expenditures. 382
The process may permit a county board to certify that the county 383
board has funding available at one time for more than two months 384
costs for those expenditures. 385

Sec. 5123.0411. The department of mental retardation and 386
developmental disabilities may bring a mandamus action against a 387
county board of mental retardation and developmental disabilities 388
that fails to pay the nonfederal share of medicaid expenditures 389
that the county board is required by division (A) of section 390
~~5126.056~~ 5126.057 of the Revised Code to pay. The department may 391
bring the mandamus action in the court of common pleas of the 392
county served by the county board or in the Franklin county court 393
of common pleas. 394

Sec. 5126.01. As used in this chapter: 395

(A) As used in this division, "adult" means an individual who 396

is eighteen years of age or over and not enrolled in a program or
service under Chapter 3323. of the Revised Code and an individual
sixteen or seventeen years of age who is eligible for adult
services under rules adopted by the director of mental retardation
and developmental disabilities pursuant to Chapter 119. of the
Revised Code.

(1) "Adult services" means services provided to an adult
outside the home, except when they are provided within the home
according to an individual's assessed needs and identified in an
individual service plan, that support learning and assistance in
the area of self-care, sensory and motor development,
socialization, daily living skills, communication, community
living, social skills, or vocational skills.

(2) "Adult services" includes all of the following:

(a) Adult day habilitation services;

(b) Adult day care;

(c) Prevocational services;

(d) Sheltered employment;

(e) Educational experiences and training obtained through
entities and activities that are not expressly intended for
individuals with mental retardation and developmental
disabilities, including trade schools, vocational or technical
schools, adult education, job exploration and sampling, unpaid
work experience in the community, volunteer activities, and
spectator sports-

~~(3) "Adult services" does not include community or~~

(f) Community employment services and supported employment
services.

(B)(1) "Adult day habilitation services" means adult services
that do the following:

(a) Provide access to and participation in typical activities 427
and functions of community life that are desired and chosen by the 428
general population, including such activities and functions as 429
opportunities to experience and participate in community 430
exploration, companionship with friends and peers, leisure 431
activities, hobbies, maintaining family contacts, community 432
events, and activities where individuals without disabilities are 433
involved; 434

(b) Provide supports or a combination of training and 435
supports that afford an individual a wide variety of opportunities 436
to facilitate and build relationships and social supports in the 437
community. 438

(2) "Adult day habilitation services" includes all of the 439
following: 440

(a) Personal care services needed to ensure an individual's 441
ability to experience and participate in vocational services, 442
educational services, community activities, and any other adult 443
day habilitation services; 444

(b) Skilled services provided while receiving adult day 445
habilitation services, including such skilled services as behavior 446
management intervention, occupational therapy, speech and language 447
therapy, physical therapy, and nursing services; 448

(c) Training and education in self-determination designed to 449
help the individual do one or more of the following: develop 450
self-advocacy skills, exercise the individual's civil rights, 451
acquire skills that enable the individual to exercise control and 452
responsibility over the services received, and acquire skills that 453
enable the individual to become more independent, integrated, or 454
productive in the community; 455

(d) Recreational and leisure activities identified in the 456
individual's service plan as therapeutic in nature or assistive in 457

developing or maintaining social supports; 458

(e) Counseling and assistance provided to obtain housing, 459
including such counseling as identifying options for either rental 460
or purchase, identifying financial resources, assessing needs for 461
environmental modifications, locating housing, and planning for 462
ongoing management and maintenance of the housing selected; 463

(f) Transportation necessary to access adult day habilitation 464
services; 465

(g) Habilitation management, as described in section 5126.14 466
of the Revised Code. 467

(3) "Adult day habilitation services" does not include 468
activities that are components of the provision of residential 469
services, family support services, or supported living services. 470

(C) "Community employment services" or "supported employment 471
services" means job training and other services related to 472
employment outside a sheltered workshop. "Community employment 473
services" or "supported employment services" include all of the 474
following: 475

(1) Job training resulting in the attainment of competitive 476
work, supported work in a typical work environment, or 477
self-employment; 478

(2) Supervised work experience through an employer paid to 479
provide the supervised work experience; 480

(3) Ongoing work in a competitive work environment at a wage 481
commensurate with workers without disabilities; 482

(4) Ongoing supervision by an employer paid to provide the 483
supervision. 484

(D) As used in this division, "substantial functional 485
limitation," "developmental delay," and "established risk" have 486
the meanings established pursuant to section 5123.011 of the 487

Revised Code.	488
"Developmental disability" means a severe, chronic disability that is characterized by all of the following:	489 490
(1) It is attributable to a mental or physical impairment or a combination of mental and physical impairments, other than a mental or physical impairment solely caused by mental illness as defined in division (A) of section 5122.01 of the Revised Code;	491 492 493 494
(2) It is manifested before age twenty-two;	495
(3) It is likely to continue indefinitely;	496
(4) It results in one of the following:	497
(a) In the case of a person under age three, at least one developmental delay or an established risk;	498 499
(b) In the case of a person at least age three but under age six, at least two developmental delays or an established risk;	500 501
(c) In the case of a person age six or older, a substantial functional limitation in at least three of the following areas of major life activity, as appropriate for the person's age: self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living, and, if the person is at least age sixteen, capacity for economic self-sufficiency.	502 503 504 505 506 507 508
(5) It causes the person to need a combination and sequence of special, interdisciplinary, or other type of care, treatment, or provision of services for an extended period of time that is individually planned and coordinated for the person.	509 510 511 512
(E) "Early childhood services" means a planned program of habilitation designed to meet the needs of individuals with mental retardation or other developmental disabilities who have not attained compulsory school age.	513 514 515 516

(F)(1) "Environmental modifications" means the physical adaptations to an individual's home, specified in the individual's service plan, that are necessary to ensure the individual's health, safety, and welfare or that enable the individual to function with greater independence in the home, and without which the individual would require institutionalization.

(2) "Environmental modifications" includes such adaptations as installation of ramps and grab-bars, widening of doorways, modification of bathroom facilities, and installation of specialized electric and plumbing systems necessary to accommodate the individual's medical equipment and supplies.

(3) "Environmental modifications" does not include physical adaptations or improvements to the home that are of general utility or not of direct medical or remedial benefit to the individual, including such adaptations or improvements as carpeting, roof repair, and central air conditioning.

(G) "Family support services" means the services provided under a family support services program operated under section 5126.11 of the Revised Code.

(H) "Habilitation" means the process by which the staff of the facility or agency assists an individual with mental retardation or other developmental disability in acquiring and maintaining those life skills that enable the individual to cope more effectively with the demands of the individual's own person and environment, and in raising the level of the individual's personal, physical, mental, social, and vocational efficiency. Habilitation includes, but is not limited to, programs of formal, structured education and training.

(I) "Habilitation center services" means services provided by a habilitation center certified by the department of mental retardation and developmental disabilities under section 5123.041

of the Revised Code and covered by the medicaid program pursuant 548
to rules adopted under section 5111.041 of the Revised Code. 549

(J) "Home and community-based services" means medicaid-funded 550
home and community-based services provided under a medicaid 551
component the department of mental retardation and developmental 552
disabilities administers pursuant to section 5111.871 of the 553
Revised Code. 554

(K) "Medicaid" has the same meaning as in section 5111.01 of 555
the Revised Code. 556

(L) "Medicaid case management services" means case management 557
services provided to an individual with mental retardation or 558
other developmental disability that the state medicaid plan 559
requires. 560

(M) "Mental retardation" means a mental impairment manifested 561
during the developmental period characterized by significantly 562
subaverage general intellectual functioning existing concurrently 563
with deficiencies in the effectiveness or degree with which an 564
individual meets the standards of personal independence and social 565
responsibility expected of the individual's age and cultural 566
group. 567

(N) "Residential services" means services to individuals with 568
mental retardation or other developmental disabilities to provide 569
housing, food, clothing, habilitation, staff support, and related 570
support services necessary for the health, safety, and welfare of 571
the individuals and the advancement of their quality of life. 572
"Residential services" includes program management, as described 573
in section 5126.14 of the Revised Code. 574

(O) "Resources" means available capital and other assets, 575
including moneys received from the federal, state, and local 576
governments, private grants, and donations; appropriately 577
qualified personnel; and appropriate capital facilities and 578

equipment. 579

(P) "Service and support administration" means the duties 580
performed by a service and support administrator pursuant to 581
section 5126.15 of the Revised Code. 582

(Q)(1) "Specialized medical, adaptive, and assistive 583
equipment, supplies, and supports" means equipment, supplies, and 584
supports that enable an individual to increase the ability to 585
perform activities of daily living or to perceive, control, or 586
communicate within the environment. 587

(2) "Specialized medical, adaptive, and assistive equipment, 588
supplies, and supports" includes the following: 589

(a) Eating utensils, adaptive feeding dishes, plate guards, 590
mylatex straps, hand splints, reaches, feeder seats, adjustable 591
pointer sticks, interpreter services, telecommunication devices 592
for the deaf, computerized communications boards, other 593
communication devices, support animals, veterinary care for 594
support animals, adaptive beds, supine boards, prone boards, 595
wedges, sand bags, sidelayers, bolsters, adaptive electrical 596
switches, hand-held shower heads, air conditioners, humidifiers, 597
emergency response systems, folding shopping carts, vehicle lifts, 598
vehicle hand controls, other adaptations of vehicles for 599
accessibility, and repair of the equipment received. 600

(b) Nondisposable items not covered by medicaid that are 601
intended to assist an individual in activities of daily living or 602
instrumental activities of daily living. 603

(R) "Supportive home services" means a range of services to 604
families of individuals with mental retardation or other 605
developmental disabilities to develop and maintain increased 606
acceptance and understanding of such persons, increased ability of 607
family members to teach the person, better coordination between 608
school and home, skills in performing specific therapeutic and 609

management techniques, and ability to cope with specific
situations.

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611

(S)(1) "Supported living" means services provided for as long
as twenty-four hours a day to an individual with mental
retardation or other developmental disability through any public
or private resources, including moneys from the individual, that
enhance the individual's reputation in community life and advance
the individual's quality of life by doing the following:

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(a) Providing the support necessary to enable an individual
to live in a residence of the individual's choice, with any number
of individuals who are not disabled, or with not more than three
individuals with mental retardation and developmental disabilities
unless the individuals are related by blood or marriage;

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(b) Encouraging the individual's participation in the
community;

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(c) Promoting the individual's rights and autonomy;

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(d) Assisting the individual in acquiring, retaining, and
improving the skills and competence necessary to live successfully
in the individual's residence.

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(2) "Supported living" includes the provision of all of the
following:

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(a) Housing, food, clothing, habilitation, staff support,
professional services, and any related support services necessary
to ensure the health, safety, and welfare of the individual
receiving the services;

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(b) A combination of life-long or extended-duration
supervision, training, and other services essential to daily
living, including assessment and evaluation and assistance with
the cost of training materials, transportation, fees, and
supplies;

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- (c) Personal care services and homemaker services; 640
- (d) Household maintenance that does not include modifications 641
to the physical structure of the residence; 642
- (e) Respite care services; 643
- (f) Program management, as described in section 5126.14 of 644
the Revised Code. 645

Sec. 5126.02. (A) As used in this section, "relative" means a 646
spouse, parent, parent-in-law, sibling, sibling-in-law, child, 647
child-in-law, grandparent, aunt, or uncle. 648

(B)(1) There is hereby created in each county a county board 649
of mental retardation and developmental disabilities consisting of 650
seven members, five of whom shall be appointed by the board of 651
county commissioners of the county, and two of whom shall be 652
appointed by the probate judge of the county. Each member shall be 653
a resident of the county. The membership of the board shall, as 654
nearly as possible, reflect the composition of the population of 655
the county. 656

All board members shall be persons interested and 657
knowledgeable in the field of mental retardation and other allied 658
fields. All board members shall be citizens of the United States. 659
Of the members appointed by the board of county commissioners, at 660
least two shall be relatives ~~by blood or marriage~~ of persons 661
eligible for ~~and currently receiving~~ services provided by the 662
county board of mental retardation and developmental disabilities, 663
and, whenever possible, one shall be a relative of a person 664
eligible for ~~and currently receiving~~ adult services, and the other 665
shall be a relative of a person eligible for ~~and currently~~ 666
~~receiving~~ early intervention services or services for pre-school 667
or school-age children. Of the two members appointed by the 668
probate judge, at least one shall be a relative ~~by blood or~~ 669

marriage of a person eligible for ~~or currently receiving~~ 670
~~residential~~ services in a public or private residential facility 671
~~subject to regulation or licensure by the director of mental~~ 672
~~retardation and developmental disabilities under sections 5123.19~~ 673
~~and 5123.20 of the Revised Code~~ or supported living. 674

Both the board of county commissioners and the probate judge 675
shall appoint under this section, to the maximum extent possible, 676
members who fulfill any applicable requirements of this section 677
for appointment and who also have professional training and 678
experience in business management, finance, law, health care 679
practice, personnel administration, or government service. 680

(2) All appointments shall be for terms of four years. The 681
membership of a person appointed as a relative of a recipient of 682
services shall not be terminated because the services are no 683
longer received. 684

Members may be reappointed, except as provided in division 685
~~(A)~~(B)(3) of this section and section 5126.022 of the Revised 686
Code. Prior to making a reappointment, the appointing authority 687
shall ascertain, through written communication with the board, 688
that the member being considered for reappointment meets the 689
requirements of this section and section 5126.022 of the Revised 690
Code. 691

(3) A member who has served during each of ~~two~~ three 692
consecutive terms shall not be reappointed for a subsequent term 693
until ~~one year~~ two years after ceasing to be a member of the 694
board, except that a member who has served for ~~six~~ ten years or 695
less within ~~two~~ three consecutive terms may be reappointed for a 696
subsequent term before becoming ineligible for reappointment for 697
~~one year~~ two years. 698

(4) Within sixty days after a vacancy occurs, it shall be 699
filled by the appointing authority for the unexpired term. Any 700
member appointed to fill a vacancy occurring prior to the 701

expiration of the term for which the member's predecessor was 702
appointed shall hold office for the remainder of that term. 703
Appointment other than appointment to fill a vacancy shall be made 704
no later than the last day of November of each year, and the term 705
of office shall commence on the date of the stated annual 706
organizational meeting in January. 707

(5) Board members shall serve without compensation, but shall 708
be reimbursed for necessary expenses incurred in the conduct of 709
board business, including those incurred within the county of 710
residence. 711

~~(B)~~(C) Each year each board member shall attend at least one 712
in-service training session provided by or approved by the 713
department of mental retardation and developmental disabilities. 714
These training sessions shall not be considered regularly 715
scheduled meetings of the board. 716

~~(C)~~(D) A county board of mental retardation and developmental 717
disabilities shall be operated as a separate administrative and 718
service entity. The board's functions shall not be combined with 719
the functions of any other entity of county government. 720
721

Sec. 5126.021. As used in this section, "immediate family" 722
means parents, brothers, sisters, spouses, sons, daughters, 723
mothers-in-law, fathers-in-law, brothers-in-law, sisters-in-law, 724
sons-in-law, and daughters-in-law. 725

(A) The following individuals shall not serve as members of 726
county boards of mental retardation and developmental 727
disabilities: 728

(1) Elected public officials, except for township trustees, 729
township clerks, and those excluded from the definition of public 730
official or employee in division (B) of section 102.01 of the 731

Revised Code;	732
(2) Members of the immediate family of another board member;	733
(3) Board employees and members of the immediate family of board employees;	734 735
(4) Former board employees within one calendar year of the termination of employment with the board on which the former employee would serve.	736 737 738
(B) A person may not serve as a member of a county board of mental retardation and developmental disabilities when either the person or a member of the person's immediate family is a board member of a contract agency of that county board unless there is no conflict of interest. In no circumstance shall a member of a county board vote on any matter before the board concerning a contract agency of which the member or a member of the member's immediate family is also a board member or an employee. All questions relating to the existence of a conflict of interest shall be submitted to the local prosecuting attorney and the Ohio ethics commission for resolution.	739 740 741 742 743 744 745 746 747 748 749
(C) No employee of an agency contracting with a county board of mental retardation and developmental disabilities or member of the immediate family of such an employee shall serve as a board member or an employee of the county board except that a county board may, pursuant to a resolution adopted by the board, employ a member of the immediate family of an employee of an agency contracting with the board.	750 751 752 753 754 755 756
(D) No person shall serve as a member or employee of a county board of mental retardation and developmental disabilities if a member of the person's immediate family serves as a county commissioner of the county served by the board unless the person was a member or employee prior to October 31, 1980.	757 758 759 760 761
(E) A county board of mental retardation and developmental	762

disabilities shall not contract with an agency whose board 763
includes a county commissioner of the county served by the county 764
board or an employee of the same county board. 765

Sec. 5126.033. (A) A county board of mental retardation and 766
developmental disabilities shall not enter into a direct services 767
contract unless the contract is limited either to the actual 768
amount of the expenses or to a reasonable and allowable amount 769
projected by the board. 770

(B) A county board shall not enter into a direct services 771
contract that would result in payment to a board member, former 772
board member, employee, former employee, or member of the 773
immediate family of a board member, former board member, employee, 774
or former employee if the person who would receive services under 775
the contract stands to receive any preferential treatment or any 776
unfair advantage over other eligible persons. 777

(C) A county board shall not enter into a direct services 778
contract for services provided in accordance with section 5126.11 779
or sections 5126.40 to 5126.46 of the Revised Code under which an 780
individual, agency, or other entity will employ a professional or 781
service employee, as defined in section 5126.20 of the Revised 782
Code, who is also an employee of that board unless all of the 783
following conditions are met: 784

(1) The employee is not in a capacity to influence the award 785
of the contract. 786

(2) The employee has not attempted in any manner to secure 787
the contract on behalf of the individual, agency, or other entity. 788

(3) The employee is in management level two or three 789
according to rules adopted by the director of mental retardation 790
and developmental disabilities. 791

(4) The employee does is not hold any administrative or 792

~~supervisory position in the employ of~~ employed by the board, ~~did~~ 793
~~not hold such a position~~ during the period when the contract ~~was~~ 794
is developed, as an administrator or supervisor responsible for 795
approving or supervising services to be provided under the 796
contract and agrees not to take such a position while the contract 797
is in effect, regardless of whether the position is related to the 798
services provided under the contract. 799

~~(4)~~(5) The employee has not taken any actions that create the 800
need for the services to be provided under the contract. 801

~~(5)~~(6) The individual, agency, or other entity seeks the 802
services of the employee because of the employee's expertise and 803
familiarity with the care and condition of one or more eligible 804
persons and other individuals with such expertise and familiarity 805
are unavailable, or an eligible person has requested to have the 806
services provided by that employee. 807

The superintendent of the county board shall notify the 808
employee and the individual, agency, or other entity that seeks 809
the employee's services of the ethics council's determination 810
under section 5126.032 of the Revised Code regarding the contract. 811
The council's determination shall be binding on all parties. 812

The employee who is the subject of the contract shall inform 813
the superintendent of the county board of any employment the 814
employee has outside the county board that is with any individual, 815
agency, or other entity that has a contract with the county board. 816

Sec. 5126.035. (A) As used in this section: 817

(1) "Provider" means a person or government entity that 818
provides services to an individual with mental retardation or 819
other developmental disability pursuant to a service contract. 820

(2) "Service contract" means a contract between a county 821
board of mental retardation and developmental disabilities and a 822

provider under which the provider is to provide services to an 823
individual with mental retardation or other developmental 824
disability. 825

(B) Each service contract that a county board of mental 826
retardation and developmental disabilities enters into with a 827
provider shall do all of the following: 828

(1) Comply with rules adopted under division (E) of this 829
section; 830

(2) If the provider is to provide home and community-based 831
services, medicaid case management services, or habilitation 832
center services, comply with all applicable statewide medicaid 833
requirements; 834

(3) Include a general operating agreement component and an 835
individual service needs addendum. 836

(C) The general operating agreement component shall include 837
all of the following: 838

(1) The roles and responsibilities of the county board 839
regarding services for individuals with mental retardation or 840
other developmental disability who reside in the county the county 841
board serves; 842

(2) The roles and responsibilities of the provider as 843
specified in the individual service needs addendum; 844

(3) Procedures for the county board to monitor the provider's 845
services; 846

(4) Procedures for the county board to evaluate the quality 847
of care and cost effectiveness of the provider's services; 848

(5) Procedures for payment of eligible claims; 849

(6) If the provider is to provide home and community-based 850
services, medicaid case management services, or habilitation 851

center services, both of the following:	852
(a) Procedures for reimbursement that conform to the	853
statewide reimbursement process and the county board's plan	854
submitted under section 5126.054 of the Revised Code;	855
(b) Procedures that ensure that the county board pays the	856
nonfederal share of the medicaid expenditures that the county	857
board is required by division (A) of section 5126.056 <u>5126.057</u> of	858
the Revised Code to pay.	859
(7) Procedures for the county board to perform service	860
utilization reviews and the implementation of required corrective	861
actions;	862
(8) Procedures for the provider to submit claims for payment	863
for a service no later than three hundred thirty days after the	864
date the service is provided;	865
(9) Procedures for rejecting claims for payment that are	866
submitted after the time required by division (B)(9) of this	867
section;	868
(10) Procedures for developing, modifying, and executing	869
initial and subsequent service plans. The procedures shall provide	870
for the provider's participation.	871
(11) Procedures for affording individuals due process	872
protections;	873
(12) General staffing, training, and certification	874
requirements that are consistent with state requirements and	875
compensation arrangements that are necessary to attract, train,	876
and retain competent personnel to deliver the services pursuant to	877
the individual service needs addendum;	878
(13) Methods to be used to document services provided and	879
procedures for submitting reports the county board requires;	880
(14) Methods for authorizing and documenting within	881

seventy-two hours changes to the individual service needs	882
addendum. The methods shall allow for changes to be initially	883
authorized verbally and subsequently in writing.	884
(15) Procedures for modifying the individual service needs	885
addendum in accordance with changes to the recipient's	886
individualized service plan;	887
(16) Procedures for terminating the individual service needs	888
addendum within thirty days of a request made by the recipient;	889
(17) A requirement that all parties to the contract accept	890
the contract's terms and conditions;	891
(18) A designated contact person and the method of contacting	892
the designated person to respond to medical or behavioral problems	893
and allegations of major unusual incidents or unusual incidents;	894
	895
(19) Procedures for ensuring the health and welfare of the	896
recipient;	897
(20) Procedures for ensuring fiscal accountability and the	898
collection and reporting of programmatic data;	899
(21) Procedures for implementing the mediation and	900
arbitration process under section 5126.036 of the Revised Code;	901
(22) Procedures for amending or terminating the contract,	902
including as necessary to make the general operating agreement	903
component consistent with any changes made to the individual	904
service needs addendum;	905
(23) Anything else allowable under federal and state law that	906
the county board and provider agree to.	907
(D) The individual service needs addendum shall be consistent	908
with the general operating agreement component and include all of	909
the following:	910

(1) The name of the individual with mental retardation or other developmental disability who is to receive the services from the provider and any information about the recipient that the provider needs to be able to provide the services;

(2) A clear and complete description of the services that the recipient is to receive as determined using statewide assessment tools;

(3) A copy of the recipient's assessment and individualized service plan;

(4) A clear and complete description of the provider's responsibilities to the recipient and county board in providing appropriate services in a coordinated manner with other providers and in a manner that contributes to and ensures the recipient's health, safety, and welfare.

(E) The director of mental retardation and developmental disabilities shall adopt rules in accordance with Chapter 119. of the Revised Code governing service contracts. A service contract does not negate the requirement that a provider of home and community-based services, medicaid case management services, or habilitation center services have a medicaid provider agreement with the department of job and family services.

Sec. 5126.036. (A) As used in this section:

(1) "Aggrieved party" means any of the following:

(a) The party to a service contract that is aggrieved by an action the other party has taken or not taken under the service contract;

(b) A person or government entity aggrieved by the refusal of a county board of mental retardation and developmental disabilities to enter into a service contract with the person or government entity;

(c) A person or government entity aggrieved by termination by 941
a county board of mental retardation and development disabilities 942
of a service contract between the person or government entity and 943
the county board. 944

(2) "Mediator/arbitrator" means either of the following: 945

(a) An attorney at law licensed to practice law in this state 946
who is mutually selected by the parties under division (B)(4) of 947
this section to conduct mediation and arbitration; 948

(b) A retired judge who is selected under division (B)(4) of 949
this section to conduct mediation and arbitration. 950

(3) "Other party" means any of the following: 951

(a) The party to a service contract that has taken or not 952
taken an action under the service contract that causes the 953
aggrieved party to be aggrieved; 954

(b) A county board of mental retardation and developmental 955
disabilities that refuses to enter into a service contract with a 956
person or government entity; 957

(c) A county board of mental retardation and developmental 958
disabilities that terminates a service contract. 959

(4) "Parties" mean either of the following: 960

(a) A county board of mental retardation and developmental 961
disabilities and a provider that have or had a service contract 962
with each other; 963

(b) A person or government entity that seeks a service 964
contract with a county board of mental retardation and 965
developmental disabilities and the county board that refuses to 966
enter into the service contract with the person or government 967
entity. 968

(5) "Provider" means a person or government entity that 969

provides services to an individual with mental retardation or 970
other developmental disability pursuant to a service contract. 971

(6) "Service contract" means a contract between a county 972
board of mental retardation and developmental disabilities and a 973
provider under which the provider is to provide services to an 974
individual with mental retardation or other developmental 975
disability. 976

(B) An aggrieved party that seeks to require the other party 977
to take or cease an action under a service contract that causes 978
the aggrieved party to be aggrieved, a person or government entity 979
aggrieved by the refusal of a county board of mental retardation 980
and developmental disabilities to enter into a service contract 981
with the person or government entity, or a person or government 982
entity aggrieved by a county board's termination of a service 983
contract between the person or government entity and the county 984
board and the other party shall follow the following mediation and 985
arbitration procedures: 986

(1) No later than thirty days after first notifying the other 987
party that the aggrieved party is aggrieved, the aggrieved party 988
shall file a written notice of mediation and arbitration with the 989
department of mental retardation and developmental disabilities 990
and provide a copy of the written notice to the other party. The 991
written notice shall include an explanation of why the aggrieved 992
party is aggrieved. The department of mental retardation and 993
developmental disabilities shall provide the department of job and 994
family services a copy of the notice. 995

(2) In the case of parties that have a current service 996
contract with each other and unless otherwise agreed to by both 997
parties, the parties shall continue to operate under the contract 998
in the manner they have been operating until the mediation and 999
arbitration process, including an appeal under division (B)(9) of 1000
this section, if any, is completed. 1001

(3) During the thirty days following the date the aggrieved party files the written notice of mediation and arbitration under division (B)(1) of this section, the parties may attempt to resolve the conflict informally. If the parties are able to resolve the conflict informally within this time, the aggrieved party shall rescind the written notice of mediation and arbitration filed under division (B)(1) of this section.

(4) No later than thirty days after the date the aggrieved party files the written notice of mediation and arbitration under division (B)(1) of this section, the parties shall mutually select an attorney at law licensed to practice law in this state to conduct the mediation and arbitration and schedule the first meeting of the mediation unless the parties informally resolve the conflict under division (B)(3) of this section. If the parties fail to select an attorney to conduct the mediation and arbitration within the required time, the parties shall request that the chief justice of the supreme court of Ohio provide the parties a list of five retired judges who are willing to perform the mediation and arbitration duties. The chief justice shall create such a list and provide it to the parties. To select the retired judge to conduct the mediation and arbitration, the parties shall take turns, beginning with the aggrieved party, striking retired judges from the list. The retired judge remaining on the list after both parties have each stricken two retired judges from the list shall perform the mediation and arbitration duties, including scheduling the first meeting of mediation if the parties are unable to agree on a date for the first meeting.

(5) A stenographic record or tape recording and transcript of each mediation and arbitration meeting shall be maintained as part of the mediation and arbitration's official records. The parties shall share the cost of the mediation and arbitration, including

the cost of the mediator/arbitrator's services but excluding the 1034
cost of representation. 1035

(6) The first mediation meeting shall be held no later than 1036
sixty days after the date the aggrieved party files the written 1037
notice of mediation and arbitration under division (B)(1) of this 1038
section unless the parties informally resolve the conflict under 1039
division (B)(3) of this section or the parties mutually agree to 1040
hold the first meeting at a later time. The mediation shall be 1041
conducted in the manner the parties mutually agree. If the parties 1042
are unable to agree on how the mediation is to be conducted, the 1043
mediator/arbitrator selected under division (B)(4) of this section 1044
shall determine how it is to be conducted. The rules of evidence 1045
may be used. The mediator/arbitrator shall attempt to resolve the 1046
conflict through the mediation process. The mediator/arbitrator's 1047
resolution of the conflict may be applied retroactively. 1048

(7) If the conflict is not resolved through the mediation 1050
process, the mediator/arbitrator shall arbitrate the conflict. The 1051
parties shall present evidence to the mediator/arbitrator in the 1052
manner the mediator/arbitrator requires. The mediator/arbitrator 1053
shall render a written recommendation within thirty days of the 1054
conclusion of the last arbitration meeting based on the service 1055
contract, applicable law, and the preponderance of the evidence 1056
presented during the arbitration. The mediator/arbitrator's 1057
recommendation may be applied retroactively. If the parties agree, 1058
the mediator/arbitrator may continue to attempt to resolve the 1059
conflict through mediation while the mediator/arbitrator 1060
arbitrates the conflict. 1061

(8) No later than thirty days after the mediator/arbitrator 1062
renders a recommendation in an arbitration, the 1063
mediator/arbitrator shall provide the parties with a written 1064
recommendation and forward a copy of the written recommendation, 1065

transcripts from each arbitration meeting, and a copy of all 1066
evidence presented to the mediator/arbitrator during the 1067
arbitration to the departments of mental retardation and 1068
developmental disabilities and job and family services. 1069

(9) No later than thirty days after the department of mental 1070
retardation and developmental disabilities receives the 1071
mediator/arbitrator's recommendation and the materials required by 1072
division (B)(8) of this section, the department shall adopt, 1073
reject, or modify the mediator/arbitrator's recommendation 1074
consistent with the mediator/arbitrator's findings of fact and 1075
conclusions of law or remand any portion of the recommendation to 1076
the mediator/arbitrator for further findings on a specific factual 1077
or legal issue. The mediator/arbitrator shall complete the further 1078
findings and provide the parties and the department with a written 1079
response to the remand within sixty days of the date the 1080
mediator/arbitrator receives the remand. On receipt of the 1081
mediator/arbitrator's response to the remand, the department, 1082
within thirty days, unless the parties agree otherwise, shall 1083
adopt, reject, or modify the mediator/arbitrator's response. The 1084
department's actions regarding the mediator/arbitrator's 1085
recommendation and response are a final adjudication order subject 1086
to appeal to the court of common pleas of Franklin county under 1087
section 119.12 of the Revised Code, except that the court shall 1088
consider only whether the conclusions of law the department adopts 1089
are in accordance with the law. 1090

(10) If the department of job and family services, in 1091
consultation with the department of mental retardation and 1092
developmental disabilities, determines no later than thirty days 1093
following the date the department of mental retardation and 1094
developmental disabilities receives the mediator/arbitrator's 1095
recommendation and the materials required by division (B)(8) of 1096
this section, or, if the recommendation is remanded under division 1097

(B)(9) of this section, thirty days following the date the
department receives the response to the remand, that any aspect of
the conflict between the parties affects the medicaid program, the
department of mental retardation and developmental disabilities
shall take all actions under division (B)(9) of this section in
consultation with the department of job and family services.

(C) If the department of mental retardation and developmental
disabilities is aware of a conflict between a county board of
mental retardation and developmental disabilities and a person or
government entity that provides or seeks to provide services to an
individual with mental retardation or other developmental
disability to which the mediation and arbitration procedures
established by this section may be applied and that the aggrieved
party has not filed a written notice of mediation and arbitration
within the time required by division (B)(1) of this section, the
department may require that the parties implement the mediation
and arbitration procedures.

(D) Each service contract shall provide for the parties to
follow the mediation and arbitration procedures established by
this section if a party takes or does not take an action under the
service contract that causes the aggrieved party to be aggrieved
or if the provider is aggrieved by the county board's termination
of the service contract.

Sec. 5126.042. (A) As used in this section:

(1) "Emergency" means any situation that creates for an
individual with mental retardation or developmental disabilities a
risk of substantial self-harm or substantial harm to others if
action is not taken within thirty days. An "emergency" may include
one or more of the following situations:

(a) Loss of present residence for any reason, including legal
action;

(b) Loss of present caretaker for any reason, including 1129
serious illness of the caretaker, change in the caretaker's 1130
status, or inability of the caretaker to perform effectively for 1131
the individual; 1132

(c) Abuse, neglect, or exploitation of the individual; 1133

(d) Health and safety conditions that pose a serious risk to 1134
the individual or others of immediate harm or death; 1135

(e) Change in the emotional or physical condition of the 1136
individual that necessitates substantial accommodation that cannot 1137
be reasonably provided by the individual's existing caretaker. 1138

(2) "Medicaid" has the same meaning as in section 5111.01 of 1139
the Revised Code. 1140

(B) If a county board of mental retardation and developmental 1141
disabilities determines that available resources are not 1142
sufficient to meet the needs of all individuals who request 1143
programs and services and may be offered the programs and 1144
services, it shall establish waiting lists for services. The board 1145
may establish priorities for making placements on its waiting 1146
lists according to an individual's emergency status and shall 1147
establish priorities in accordance with division (D) of this 1148
section. 1149

The individuals who may be placed on a waiting list include 1150
individuals with a need for services on an emergency basis and 1151
individuals who have requested services for which resources are 1152
not available. 1153

Except for an individual who is to receive priority for 1154
services pursuant to division (D)(3) of this section, an 1155
individual who currently receives a service but would like to 1156
change to another service shall not be placed on a waiting list 1157
but shall be placed on a service substitution list. The board 1158
shall work with the individual, service providers, and all 1159

appropriate entities to facilitate the change in service as 1160
expeditiously as possible. The board may establish priorities for 1161
making placements on its service substitution lists according to 1162
an individual's emergency status. 1163

In addition to maintaining waiting lists and service 1164
substitution lists, a board shall maintain a long-term service 1165
planning registry for individuals who wish to record their 1166
intention to request in the future a service they are not 1167
currently receiving. The purpose of the registry is to enable the 1168
board to document requests and to plan appropriately. The board 1169
may not place an individual on the registry who meets the 1170
conditions for receipt of services on an emergency basis. 1171

(C) A county board shall establish a separate waiting list 1172
for each of the following categories of services, and may 1173
establish separate waiting lists within the waiting lists: 1174

(1) Early childhood services; 1175

(2) Educational programs for preschool and school age 1176
children; 1177

(3) Adult services; 1178

(4) ~~service~~ Service and support administration; 1179

(5) Residential services and supported living; 1180

(6) Transportation services; 1181

(7) Other services determined necessary and appropriate for 1182
persons with mental retardation or a developmental disability 1183
according to their individual habilitation or service plans; 1184

(8) Family support services provided under section 5126.11 of 1185
the Revised Code. 1186

(D) Except as provided in division ~~(E)~~(G) of this section, a 1187
county board shall do, as priorities, all of the following in 1188

accordance with the assessment component, approved under section 1189
5123.046 of the Revised Code, of the county board's plan approved 1190
developed under section ~~5123.046~~ 5126.054 of the Revised Code as 1191
priorities: 1192

(1) For the purpose of obtaining additional federal medicaid 1193
funds for home and community-based services, medicaid case 1194
management services, and habilitation center services, do both of 1195
the following: 1196

(a) Give an individual who is eligible for home and 1197
community-based services and meets both of the following 1198
requirements priority over any other individual on a waiting list 1199
established under division (C) of this section for home and 1200
community-based services that include supported living, 1201
residential services, or family support services: 1202

(i) Is twenty-two years of age or older; 1203

(ii) Receives supported living or family support services. 1204

(b) Give an individual who is eligible for home and 1205
community-based services and meets both of the following 1206
requirements priority over any other individual on a waiting list 1207
established under division (C) of this section for home and 1208
community-based services that include adult services: 1209

(i) Resides in the individual's own home or the home of the 1210
individual's family and will continue to reside in that home after 1211
enrollment in home and community-based services; 1212

(ii) Receives adult services from the county board. 1213

(2) As federal medicaid funds become available pursuant to 1214
division (D)(1) of this section, give an individual who is 1215
eligible for home and community-based services and meets any of 1216
the following requirements priority for such services over any 1217
other individual on a waiting list established under division (C) 1218
of this section ~~other than an individual given priority under~~ 1219

division (D)(1) of this section:	1220
(a) Does not receive residential services or supported living, either needs services in the individual's current living arrangement or will need services in a new living arrangement, and has a primary caregiver who is sixty years of age or older;	1221 1222 1223 1224
(b) Is less than twenty-two years of age, does not receive residential services or supported living, resides in the home of the individual's family, and has at least one of the following service needs that are unusual in scope or intensity:	1225 1226 1227 1228
(i) Severe behavior problems for which a behavior support plan is needed;	1229 1230
(ii) An emotional disorder for which anti-psychotic medication is needed;	1231 1232
(iii) A medical condition that leaves the individual dependent on life-support medical technology;	1233 1234
(iv) A condition affecting multiple body systems for which a combination of specialized medical, psychological, educational, or habilitation services are needed;	1235 1236 1237
(v) A condition the county board determines to be comparable in severity to any condition described in division (D)(1) <u>(2)(b)(i)</u> to (iv) of this section and places the individual at significant risk of institutionalization.	1238 1239 1240 1241
(c) Is twenty-two years of age or older, <u>does not receive residential services or supported living,</u> and is determined by the county board to have intensive needs for <u>residential home and community-based</u> services on an in-home or out-of-home basis.	1242 1243 1244 1245
(3) In fiscal years 2002 and 2003, give an individual who is eligible for home and community-based services, resides in an intermediate care facility for the mentally retarded or nursing facility, chooses to move to another setting with the help of home	1246 1247 1248 1249

and community-based services, and has been determined by the
department of mental retardation and developmental disabilities to
be capable of residing in the other setting, priority over any
other individual on a waiting list established under division (C)
of this section for home and community-based services who does not
meet these criteria. The department of mental retardation and
developmental disabilities shall identify the individuals to
receive priority under division (D)(3) of this section, assess the
needs of the individuals, and notify the county boards that are to
provide the individuals priority under division (D)(3) of this
section of the individuals identified by the department and the
individuals' assessed needs.

(E)(1) If an individual with mental retardation or other
developmental disability who has priority for home and
community-based services under division (D)(2)(a) or (c) of this
section chooses, instead, to seek admission to an intermediate
care facility for the mentally retarded or nursing facility, is
eligible to have medicaid pay for the services of such a facility,
and is admitted to such a facility, a county board may provide,
except as provided in division (G) of this section, another
individual with mental retardation or other developmental
disability priority over any other individual on a waiting list
established under division (C) of this section for home and
community-based services if the individual meets all of the
following requirements:

(a) Resides in an intermediate care facility for the mentally
retarded or nursing facility at the time of application for the
home and community-based services;

(b) Has intensive needs and is eligible for home and
community-based services;

(c) Is not given priority for the services pursuant to
division (D)(3) of this section.

(2) An individual may receive priority for home and community-based services pursuant to division (E)(1) of this section regardless of whether the individual admitted to an intermediate care facility for the mentally retarded or nursing facility resides in the same or different county. If the individuals reside in different counties, the county boards serving the counties in which the individuals reside shall enter into a collaborative agreement with each other as necessary to implement this division. One or more other county boards may also enter into the collaborative agreement with the two county boards.

(F) If two or more individuals on a waiting list established under division (C) of this section for home and community-based services have priority for the services pursuant to division (D)(1), (D)(2), or (E) of this section, a county board may use, until December 31, 2003, criteria specified in rules adopted under division (K)(2) of this section in determining the order in which the individuals with priority will be offered the services. Otherwise, the county board shall offer the home and community-based services to such individuals in the order they are placed on the waiting list.

(G)(1) No individual may receive priority for services pursuant to division (D) or (E) of this section over an individual placed on a waiting list established under division (C) of this section on an emergency status.

(2) No more than ~~two~~ four hundred individuals in the state may receive priority for services during ~~state fiscal years~~ the 2002 and 2003 biennium pursuant to division (D)(2)(b) of this section.

(3) No more than a total of seventy-five individuals in the state may receive priority for services during state fiscal years 2002 and 2003 pursuant to division (D)(3) of this section.

~~(F)(H)~~ Prior to establishing any waiting list under this 1313
section, a county board shall develop and implement a policy for 1314
waiting lists that complies with this section and rules ~~that the~~ 1315
~~department of mental retardation and developmental disabilities~~ 1316
~~shall adopt in accordance with Chapter 119. of the Revised Code.~~ 1317
~~The department's rules shall include procedures to be followed to~~ 1318
~~ensure that the due process rights of individuals placed on~~ 1319
~~waiting lists are not violated~~ adopted under division (K) of this 1320
section. 1321

Prior to placing an individual on a waiting list, the county 1322
board shall assess the service needs of the individual in 1323
accordance with all applicable state and federal laws. The county 1324
board shall place the individual on the appropriate waiting list 1325
and may place the individual on more than one waiting list. The 1326
county board shall notify the individual of the individual's 1327
placement and position on each waiting list on which the 1328
individual is placed. 1329

At least annually, the county board shall reassess the 1330
service needs of each individual on a waiting list. If it 1331
determines that an individual no longer needs a program or 1332
service, the county board shall remove the individual from the 1333
waiting list. If it determines that an individual needs a program 1334
or service other than the one for which the individual is on the 1335
waiting list, the county board shall provide the program or 1336
service to the individual or place the individual on a waiting 1337
list for the program or service in accordance with the board's 1338
policy for waiting lists. 1339

When a program or service for which there is a waiting list 1340
becomes available, the county board shall reassess the service 1341
needs of the individual next scheduled on the waiting list to 1342
receive that program or service. If the reassessment demonstrates 1343
that the individual continues to need the program or service, the 1344

board shall offer the program or service to the individual. If it
determines that an individual no longer needs a program or
service, the county board shall remove the individual from the
waiting list. If it determines that an individual needs a program
or service other than the one for which the individual is on the
waiting list, the county board shall provide the program or
service to the individual or place the individual on a waiting
list for the program or service in accordance with the board's
policy for waiting lists. The county board shall notify the
individual of the individual's placement and position on the
waiting list on which the individual is placed.

~~(G)~~(I) A child subject to a determination made pursuant to
section 121.38 of the Revised Code who requires the home and
community-based services provided through the medicaid component
that the department of mental retardation and developmental
disabilities administers under section 5111.871 of the Revised
Code shall receive services through that medicaid component. For
all other services, a child subject to a determination made
pursuant to section 121.38 of the Revised Code shall be treated as
an emergency by the county boards and shall not be subject to a
waiting list.

~~(H)~~(J) Not later than the fifteenth day of March of each
even-numbered year, each county board shall prepare and submit to
the director of mental retardation and developmental disabilities
its recommendations for the funding of services for individuals
with mental retardation and developmental disabilities and its
proposals for reducing the waiting lists for services.

~~(I)~~(K)(1) The department of mental retardation and
developmental disabilities shall adopt rules in accordance with
Chapter 119. of the Revised Code governing waiting lists
established under this section. The rules shall include procedures
to be followed to ensure that the due process rights of

individuals placed on waiting lists are not violated. 1377

(2) As part of the rules adopted under this division, the 1378
department shall adopt, not later than December 31, 2001, rules 1379
establishing criteria a county board may use under division (F) of 1380
this section in determining the order in which individuals with 1381
priority for home and community-based services will be offered the 1382
services. The rules shall also specify conditions under which a 1383
county board, when there is no individual with priority for home 1384
and community-based services pursuant to division (D)(1), (D)(2), 1385
or (E) of this section available and appropriate for the services, 1386
may offer the services to an individual on a waiting list for the 1387
services but not given such priority for the services. The rules 1388
adopted under division (K)(2) of this section shall cease to have 1389
effect December 31, 2003. 1390

(L) The following shall take precedence over the applicable 1391
provisions of this section: 1392

(1) Medicaid rules and regulations; 1393

(2) Any specific requirements that may be contained within a 1394
medicaid state plan amendment or waiver program that a county 1395
board has authority to administer or with respect to which it has 1396
authority to provide services, programs, or supports. 1397

Sec. 5126.046. (A) Each county board of mental retardation 1398
and developmental disabilities that has medicaid local 1399
administrative authority under division (A) of section 5126.055 of 1400
the Revised Code for habilitation, vocational, or community 1401
employment services provided as part of home and community-based 1402
services shall create a list of all persons and government 1403
entities eligible to provide such habilitation, vocational, or 1404
community employment services. If the county board chooses and is 1405
eligible to provide such habilitation, vocational, or community 1406
employment services, the county board shall include itself on the 1407

list. The county board shall make the list available to each 1408
individual with mental retardation or other developmental 1409
disability who resides in the county and is eligible for such 1410
habilitation, vocational, or community employment services. The 1411
county board shall also make the list available to such 1412
individuals' families. 1413

An individual with mental retardation or other developmental 1414
disability who is eligible for habilitation, vocational, or 1415
community employment services may choose the provider of the 1416
services. 1417

~~If a~~ A county board that has medicaid local administrative 1418
authority under division (A) of section 5126.055 of the Revised 1419
Code for habilitation, vocational, and community employment 1420
services provided as part of home and community-based services, 1421
~~the county board~~ shall pay the nonfederal share of the 1422
habilitation, vocational, and community employment services when 1423
required by section ~~5126.056~~ 5126.057 of the Revised Code. The 1424
department of mental retardation and developmental disabilities 1425
shall pay the nonfederal share of such habilitation, vocational, 1426
and community employment services when required by section 1427
5123.047 of the Revised Code. 1428

(B) Each month, the department of mental retardation and 1429
developmental disabilities shall create a list of all persons and 1430
government entities eligible to provide residential services and 1431
supported living. The department shall include on the list all 1432
residential facilities licensed under section 5123.19 of the 1433
Revised Code and all supported living providers certified under 1434
section 5126.431 of the Revised Code. The department shall 1435
distribute the monthly lists to county boards that have local 1436
administrative authority under division (A) of section 5126.055 of 1437
the Revised Code for residential services and supported living 1438
provided as part of home and community-based services. A county 1439

board that receives a list shall make it available to each 1440
individual with mental retardation or other developmental 1441
disability who resides in the county and is eligible for such 1442
residential services or supported living. The county board shall 1443
also make the list available to the families of those individuals. 1444

An individual who is eligible for residential services or 1445
supported living may choose the provider of the residential 1446
services or supported living. 1447

~~If a~~ A county board that has medicaid local administrative 1448
authority under division (A) of section 5126.055 of the Revised 1449
Code for residential services and supported living provided as 1450
part of home and community-based services, ~~the county board~~ shall 1451
pay the nonfederal share of the residential services and supported 1452
living when required by section ~~5126.056~~ 5126.057 of the Revised 1453
Code. The department shall pay the nonfederal share of the 1454
residential services and supported living when required by section 1455
5123.047 of the Revised Code. 1456

(C) If a county board that has medicaid local administrative 1457
authority under division (A) of section 5126.055 of the Revised 1458
Code for home and community-based services violates the right 1459
established by this section of an individual to choose a provider 1460
that is qualified and willing to provide services to the 1461
individual, the individual shall receive timely notice that the 1462
individual may request a hearing under section 5101.35 of the 1463
Revised Code. 1464

(D) The departments of mental retardation and developmental 1465
disabilities and job and family services shall adopt rules in 1466
accordance with Chapter 119. of the Revised Code governing the 1467
implementation of this section. The rules shall include procedures 1468
for individuals to choose their service providers. The rules shall 1469
not be limited by a provider selection system established under 1470
section 5126.42 of the Revised Code, including any pool of 1471

providers created pursuant to a provider selection system. 1472
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Sec. 5126.05. (A) Subject to the rules established by the 1474
director of mental retardation and developmental disabilities 1475
pursuant to Chapter 119. of the Revised Code for programs and 1476
services offered pursuant to this chapter, and subject to the 1477
rules established by the state board of education pursuant to 1478
Chapter 119. of the Revised Code for programs and services offered 1479
pursuant to Chapter 3323. of the Revised Code, the county board of 1480
mental retardation and developmental disabilities shall: 1481

(1) Administer and operate facilities, programs, and services 1482
as provided by this chapter and Chapter 3323. of the Revised Code 1483
and establish policies for their administration and operation; 1484
1485

(2) Coordinate, monitor, and evaluate existing services and 1486
facilities available to individuals with mental retardation and 1487
developmental disabilities; 1488

(3) Provide early childhood services, supportive home 1489
services, and adult services, according to the plan and priorities 1490
developed under section 5126.04 of the Revised Code; 1491

(4) Provide or contract for special education services 1492
pursuant to Chapters 3317. and 3323. of the Revised Code and 1493
ensure that related services, as defined in section 3323.01 of the 1494
Revised Code, are available according to the plan and priorities 1495
developed under section 5126.04 of the Revised Code; 1496

(5) Adopt a budget, authorize expenditures for the purposes 1497
specified in this chapter and do so in accordance with section 1498
319.16 of the Revised Code, approve attendance of board members 1499
and employees at professional meetings and approve expenditures 1500
for attendance, and exercise such powers and duties as are 1501
prescribed by the director; 1502

(6) Submit annual reports of its work and expenditures, 1503
pursuant to sections 3323.09 and 5126.12 of the Revised Code, to 1504
the director, the superintendent of public instruction, and the 1505
board of county commissioners at the close of the fiscal year and 1506
at such other times as may reasonably be requested; 1507

(7) Authorize all positions of employment, establish 1508
compensation, including but not limited to salary schedules and 1509
fringe benefits for all board employees, approve contracts of 1510
employment for management employees that are for a term of more 1511
than one year, employ legal counsel under section 309.10 of the 1512
Revised Code, and contract for employee benefits; 1513

(8) Provide service and support administration in accordance 1514
with section ~~5126.046~~ 5126.15 of the Revised Code; 1515

(9) Certify respite care homes pursuant to rules adopted 1516
under section 5123.171 of the Revised Code by the director of 1517
mental retardation and developmental disabilities. 1518

(B) To the extent that rules adopted under this section apply 1519
to the identification and placement of handicapped children under 1520
Chapter 3323. of the Revised Code, they shall be consistent with 1521
the standards and procedures established under sections 3323.03 to 1522
3323.05 of the Revised Code. 1523

(C) Any county board may enter into contracts with other such 1524
boards and with public or private, nonprofit, or profit-making 1525
agencies or organizations of the same or another county, to 1526
provide the facilities, programs, and services authorized or 1527
required, upon such terms as may be agreeable, and in accordance 1528
with this chapter and Chapter 3323. of the Revised Code and rules 1529
adopted thereunder and in accordance with sections 307.86 and 1530
5126.071 of the Revised Code. 1531

(D) A county board may combine transportation for children 1532
and adults enrolled in programs and services offered under section 1533

5126.12 with transportation for children enrolled in classes 1534
funded under section 3317.20 or units approved under section 1535
3317.05 of the Revised Code. 1536

(E) A county board may purchase all necessary insurance 1537
policies, may purchase equipment and supplies through the 1538
department of administrative services or from other sources, and 1539
may enter into agreements with public agencies or nonprofit 1540
organizations for cooperative purchasing arrangements. 1541

(F) A county board may receive by gift, grant, devise, or 1542
bequest any moneys, lands, or property for the benefit of the 1543
purposes for which the board is established and hold, apply, and 1544
dispose of the moneys, lands, and property according to the terms 1545
of the gift, grant, devise, or bequest. All money received by 1546
gift, grant, bequest, or disposition of lands or property received 1547
by gift, grant, devise, or bequest shall be deposited in the 1548
county treasury to the credit of such board and shall be available 1549
for use by the board for purposes determined or stated by the 1550
donor or grantor, but may not be used for personal expenses of the 1551
board members. Any interest or earnings accruing from such gift, 1552
grant, devise, or bequest shall be treated in the same manner and 1553
subject to the same provisions as such gift, grant, devise, or 1554
bequest. 1555

(G) The board of county commissioners shall levy taxes and 1556
make appropriations sufficient to enable the county board of 1557
mental retardation and developmental disabilities to perform its 1558
functions and duties, and may utilize any available local, state, 1559
and federal funds for such purpose. 1560

Sec. 5126.054. (A) Each county board of mental retardation 1561
and developmental disabilities shall, by resolution, develop a 1562
three-calendar year plan that includes ~~all of~~ the following four 1563
components: 1564

(1) An assessment component that includes all of the 1565
following: 1566

(a) The number of individuals with mental retardation or 1567
other developmental disability residing in the county who need the 1568
level of care provided by an intermediate care facility for the 1569
mentally retarded, may seek home and community-based services, are 1570
given priority for the services pursuant to division (D) of 1571
section 5126.042 of the Revised Code; the service needs of those 1572
individuals; and the projected annualized cost for services; 1573

(b) The source of funds available to the county board to pay 1574
the nonfederal share of medicaid expenditures that the county 1575
board is required by division (A) of section ~~5126.056~~ 5126.057 of 1576
the Revised Code to pay; 1577

(c) Any other applicable information or conditions that the 1578
department of mental retardation and developmental disabilities 1579
requires as a condition of approving the ~~plan~~ component under 1580
section 5123.046 of the Revised Code. 1581

(2) A component that provides for the recruitment, training, 1582
and retention of existing and new direct care staff necessary to 1583
implement services included in individualized service plans, 1584
including behavior management services and health management 1585
services such as delegated nursing and other habilitation ~~center~~ 1586
services, and protect the health and welfare of individuals 1587
receiving services included in the individual's individualized 1588
service plan by complying with safeguards for unusual and major 1589
unusual incidents, day-to-day program management, and other 1590
requirements the department shall identify. A county board shall 1591
develop this component in collaboration with providers of 1592
medicaid-funded services with which the county board contracts. A 1593
county board shall include all of the following in the component: 1594

(a) The source and amount of funds available for the 1595

component; 1596

(b) A plan and timeline for implementing the component with 1597
the medicaid providers under contract with the county board; 1598

(c) The mechanisms the county board shall use to ensure the 1599
financial and program accountability of the medicaid provider's 1600
implementation of the component. 1601

(3) A preliminary implementation component that specifies the 1602
number of individuals to be provided, during the first year that 1603
the plan is in effect, home and community-based services pursuant 1604
to the priority given to them under divisions (D)(1) and (2) of 1605
section 5126.042 of the Revised Code and the types of home and 1606
community-based services the individuals are to receive; 1607

(4) A component that provides for the implementation of 1608
habilitation center services, medicaid case management services, 1609
and home and community-based services for individuals who begin to 1610
receive the services on or after the date the plan is approved 1611
under section 5123.046 of the Revised Code. A county board shall 1612
include all of the following in the component: 1613

(a) If the department of mental retardation and developmental 1614
disabilities or department of job and family services requires, an 1615
agreement to pay the nonfederal share of medicaid expenditures 1616
that the county board is required by division (A) of section 1617
~~5126.056~~ 5126.057 of the Revised Code to pay; 1618
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(b) How the services are to be phased in over the period the 1620
plan covers, including how the county board will serve individuals 1621
on a waiting list established under division (C) of section 1622
5126.042 who are given priority status under division (D)(1) of 1623
that section; 1624

(c) Any agreement or commitment regarding the county board's 1625
funding of home and community-based services that the county board 1626

has with the department at the time the county board develops the component;

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(d) Assurances adequate to the department that the county board will comply with all of the following requirements:

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(i) To provide the types of home and community-based services specified in the preliminary implementation component required by division (A)(3) of this section to at least the number of individuals specified in that component;

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(ii) To use any additional funds the county board receives for the services to improve the county board's resource capabilities for supporting such services available in the county at the time the component is developed and to expand the services to accommodate the unmet need for those services in the county;

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~~(ii)~~(iii) To employ a business manager who is either a new employee who has earned at least a bachelor's degree in business administration or a current employee who has the equivalent experience of a bachelor's degree in business administration. If the county board will employ a new employee, the county board shall include in the component a timeline for employing the employee.

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~~(iii)~~(iv) To employ or contract with a medicaid services manager who is either a new employee who has earned at least a bachelor's degree or a current employee who has the equivalent experience of a bachelor's degree. If the county board will employ a new employee, the county board shall include in the component a timeline for employing the employee. Two or three county boards that have a combined total enrollment in county board services not exceeding one thousand individuals as determined pursuant to certifications made under division (B) of section 5126.12 of the Revised Code may satisfy this requirement by sharing the services of a medicaid services manager or using the services of a medicaid

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services manager employed by or under contract with a regional 1658
council that the county boards establish under section 5126.13 of 1659
the Revised Code. 1660

(e) An agreement to comply with the method, developed by 1661
rules adopted under section 5123.0413 of the Revised Code, of 1662
paying for extraordinary costs, including extraordinary costs for 1663
services to individuals with mental retardation or other 1664
developmental disability, and ensuring the availability of 1665
adequate funds in the event a county property tax levy for 1666
services for individuals with mental retardation or other 1667
developmental disability fails; 1668

(f) Programmatic and financial accountability measures and 1669
projected outcomes expected from the implementation of the plan; 1670

(g) Any other applicable information or conditions that the 1671
department requires as a condition of approving the plan component 1672
under section 5123.046 of the Revised Code. 1673

(B) For the purpose of obtaining the department's approval 1674
under section 5123.046 of the Revised Code of the plan the county 1675
board develops under division (A) of this section, a county board 1676
shall do ~~both~~ all of the following: 1677

(1) Submit the components required by divisions (A)(1) and 1678
(2) of this section to the department not later than August 1, 1679
2001; 1680

(2) Submit the component required by division (A)(3) of this 1681
section to the department not later than January 31, 2002; 1682

(3) Submit the component required by division (A)(3)(4) of 1683
this section to the department not later than ~~November~~ July 1, 1684
~~2001~~ 2002. 1685

(C) A county board whose plan developed under division (A) of 1686
this section is approved by the department under section 5123.046 1687
of the Revised Code shall update and renew the plan in accordance 1688

with a schedule the department shall develop.

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Sec. 5126.055. (A) Except as provided in ~~division (G) of this~~
section 5126.056 of the Revised Code, a county board of mental
retardation and developmental disabilities ~~with an approved plan~~
~~under section 5123.046 of the Revised Code~~ has medicaid local
administrative authority to, and shall, do all of the following
for an individual with mental retardation or other developmental
disability who resides in the county that the county board serves
and seeks or receives home and community-based services:

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(1) Perform assessments and evaluations of the individual. As
part of the assessment and evaluation process, the county board
shall do all of the following:

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(a) Make a recommendation to the department of mental
retardation and developmental disabilities on whether the
department should approve or deny the individual's application for
the services, including on the basis of whether the individual
needs the level of care an intermediate care facility for the
mentally retarded provides;

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(b) If the individual's application is denied because of the
county board's recommendation and the individual requests a
hearing under section 5101.35 of the Revised Code, present, with
the department of mental retardation and developmental
disabilities or department of job and family services, whichever
denies the application, the reasons for the recommendation and
denial at the hearing;

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(c) If the individual's application is approved, recommend to
the departments of mental retardation and developmental
disabilities and job and family services the services that should
be included in the individual's individualized service plan and,
if either department approves, reduces, denies, or terminates a
service included in the individual's individualized service plan

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under section 5111.871 of the Revised Code because of the county
board's recommendation, present, with the department that made the
approval, reduction, denial, or termination, the reasons for the
recommendation and approval, reduction, denial, or termination at
a hearing under section 5101.35 of the Revised Code.

(2) If the individual has been identified by the department
of mental retardation and developmental disabilities as an
individual to receive priority for home and community-based
services pursuant to division (D)(3) of section 5126.042 of the
Revised Code, assist the department in expediting the transfer of
the individual from an intermediate care facility for the mentally
retarded or nursing facility to the home and community-based
services;

(3) In accordance with the rules adopted under section
5126.046 of the Revised Code, perform the county board's duties
under that section regarding assisting the individual's right to
choose a qualified and willing provider of the services and, at a
hearing under section 5101.35 of the Revised Code, present
evidence of the process for appropriate assistance in choosing
providers;

(4) Unless the county board provides the services under
division (A)(5) of this section, contract with the person or
government entity the individual chooses in accordance with
section 5126.046 of the Revised Code to provide the services if
the person or government entity is qualified and agrees to provide
the services. The contract shall contain all the provisions
required by section ~~5126.057~~ 5126.035 of the Revised Code and
require the provider to agree to furnish, in accordance with the
provider's medicaid provider agreement and for the authorized
reimbursement rate, the services the individual requires.

(5) If the county board is certified under section 5123.045
of the Revised Code to provide the services and agrees to provide

the services to the individual and the individual chooses the 1752
county board to provide the services, furnish, in accordance with 1753
the county board's medicaid provider agreement and for the 1754
authorized reimbursement rate, the services the individual 1755
requires; 1756

(6) Monitor the services provided to the individual and 1757
ensure the individual's health, safety, and welfare. The 1758
monitoring shall include quality assurance activities. If the 1759
county board provides the services, the department of mental 1760
retardation and developmental disabilities shall also monitor the 1761
services. 1762

(7) Develop, with the individual and the provider of the 1763
individual's services, an effective individualized service plan 1764
that includes coordination of services, recommend that the 1765
departments of mental retardation and developmental disabilities 1766
and job and family services approve the plan, and implement the 1767
plan unless either department disapproves it; 1768

(8) Have an investigative agent conduct investigations under 1769
section 5126.313 of the Revised Code that concern the individual; 1770

(9) Have a service and support administrator perform the 1771
duties under division (B)(9) of section 5126.15 of the Revised 1772
Code that concern the individual. 1773

(B) Except as provided in ~~division (G) of this section~~ 1774
~~5126.056 of the Revised Code~~, a county board ~~with an approved plan~~ 1775
~~under section 5123.046 of the Revised Code~~ has medicaid local 1776
administrative authority to, and shall, do all of the following 1777
for an individual with mental retardation or other developmental 1778
disability who resides in the county that the county board serves 1779
and seeks or receives medicaid case management services or 1780
habilitation center services, other than habilitation center 1781
services for which a school district is required by division (E) 1782

of section 5111.041 of the Revised Code to pay the nonfederal 1783
share: 1784

(1) Perform assessments and evaluations of the individual for 1785
the purpose of recommending to the departments of mental 1786
retardation and developmental disabilities and job and family 1787
services the services that should be included in the individual's 1788
individualized service plan; 1789

(2) If the department of mental retardation and developmental 1790
disabilities or department of job and family services approves, 1791
reduces, denies, or terminates a service included in the 1792
individual's individualized service plan under section 5111.041 or 1793
5111.042 of the Revised Code because of the county board's 1794
recommendation under division (B)(1) of this section, present, 1795
with the department that made the approval, reduction, denial, or 1796
termination, the reasons for the recommendation and approval, 1797
reduction, denial, or termination at a hearing under section 1798
5101.35 of the Revised Code and inform the individual that the 1799
individual may file a complaint with the county board under 1800
section 5126.06 of the Revised Code at the same time the 1801
individual pursues an appeal under section 5101.35 of the Revised 1802
Code; 1803

(3) In accordance with rules the departments of mental 1804
retardation and developmental disabilities and job and family 1805
services shall adopt in accordance with Chapter 119. of the 1806
Revised Code governing the process for individuals to choose 1807
providers of medicaid case management services and habilitation 1808
center services, assist the individual in choosing the provider of 1809
the services. The rules shall provide for both of the following: 1810

(a) The county board providing the individual up-to-date 1811
information about qualified providers that the department of 1812
mental retardation and developmental disabilities shall make 1813
available to the county board; 1814

(b) If the individual chooses a provider who is qualified and willing to provide the services but is denied that provider, the individual receiving timely notice that the individual may request a hearing under section 5101.35 of the Revised Code and, at the hearing, the county board presenting evidence of the process for appropriate assistance in choosing providers.

(4) Unless the county board provides the services under division (B)(5) of this section, contract with the person or government entity that the individual chooses in accordance with the rules adopted under division (B)(3) of this section to provide the services if the person or government entity is qualified and agrees to provide the services. The contract shall contain all the provisions required by section ~~5126.057~~ 5126.035 of the Revised Code and require the provider to agree to furnish, in accordance with the provider's medicaid provider agreement and for the authorized reimbursement rate, the services the individual requires.

(5) If the county board is certified under section 5123.041 of the Revised Code to provide the services and agrees to provide the services to the individual and the individual chooses the county board to provide the services, furnish, in accordance with the county board's medicaid provider agreement and for the authorized reimbursement rate, the services the individual requires;

(6) Monitor the services provided to the individual. The monitoring shall include quality assurance activities. If the county board provides the services, the department of mental retardation and developmental disabilities shall also monitor the services.

(7) Develop with the individual and the provider of the individual's services, and with the approval of the departments of mental retardation and developmental disabilities and job and

family services, implement an effective plan for coordinating the 1847
services in accordance with the individual's approved 1848
individualized service plan; 1849

(8) Have an investigative agent conduct investigations under 1850
section 5126.313 of the Revised Code that concern the individual; 1851

(9) Have a service and support administrator perform the 1852
duties under division (B)(9) of section 5126.15 of the Revised 1853
Code that concern the individual. 1854

(C) A county board shall perform its medicaid local 1855
administrative authority under this section in accordance with all 1856
of the following: 1857

(1) The county board's plan that the department of mental 1858
retardation and developmental disabilities approves under section 1859
5123.046 of the Revised Code; 1860

(2) All applicable federal and state laws; 1861

(3) All applicable policies of the departments of mental 1862
retardation and developmental disabilities and job and family 1863
services and the United States department of health and human 1864
services; 1865

(4) The department of job and family services' supervision 1866
under its authority under section 5111.01 of the Revised Code to 1867
act as the single state medicaid agency; 1868

(5) The department of mental retardation and developmental 1869
disabilities' oversight. 1870

(D) The departments of mental retardation and developmental 1871
disabilities and job and family services shall communicate with 1872
and provide training to county boards regarding medicaid local 1873
administrative authority granted by this section. The 1874
communication and training shall include issues regarding audit 1875
protocols and other standards established by the United States 1876

department of health and human services that the departments 1877
determine appropriate for communication and training. County 1878
boards shall participate in the training. The departments shall 1879
assess the county board's compliance against uniform standards 1880
that the departments shall establish. 1881

(E) A county board may not delegate its medicaid local 1882
administrative authority granted under this section but may 1883
contract with a person or government entity, including a council 1884
of governments, for assistance with its medicaid local 1885
administrative authority. A county board that enters into such a 1886
contract shall notify the director of mental retardation and 1887
developmental disabilities. The notice shall include the tasks and 1888
responsibilities that the contract gives to the person or 1889
government entity. The person or government entity shall comply in 1890
full with all requirements to which the county board is subject 1891
regarding the person or government entity's tasks and 1892
responsibilities under the contract. The county board remains 1893
ultimately responsible for the tasks and responsibilities. 1894

(F) A county board that has medicaid local administrative 1895
authority under this section shall, through the departments of 1896
mental retardation and developmental disabilities and job and 1897
family services, reply to, and cooperate in arranging compliance 1898
with, a program or fiscal audit or program violation exception 1899
that a state or federal audit or review discovers. The department 1900
of job and family services shall timely notify the department of 1901
mental retardation and developmental disabilities and the county 1902
board of any adverse findings. After receiving the notice, the 1903
county board, in conjunction with the department of mental 1904
retardation and developmental disabilities, shall cooperate fully 1905
with the department of job and family services and timely prepare 1906
and send to the department a written plan of correction or 1907
response to the adverse findings. The county board is liable for 1908

any adverse findings that result from an action it takes or fails
to take in its implementation of medicaid local administrative
authority. 1909
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(G)(1) If the department of mental retardation and
developmental disabilities or department of job and family
services determines that a county board's implementation of its
medicaid local administrative authority under this section is
deficient, the department that makes the determination shall
require that county board do the following: 1912
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(a)(1) If the deficiency affects the health, safety, or
welfare of an individual with mental retardation or other
developmental disability, correct the deficiency within
twenty-four hours; 1918
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(b)(2) If the deficiency does not affect the health, safety,
or welfare of an individual with mental retardation or other
developmental disability, receive technical assistance from the
department or submit a plan of correction to the department that
is acceptable to the department within sixty days and correct the
deficiency within the time required by the plan of correction. 1922
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~~(2) If the county board fails to correct a deficiency within
the time required by division (G)(1) of this section to the
satisfaction of the department, or submit an acceptable plan of
correction within the time required by division (G)(1)(b) of this
section, the department shall issue an order terminating the
county board's medicaid local administrative authority over all or
part of home and community-based services, medicaid managed care
services, habilitation center services, all or part of two of
those services, or all or part of all three of those services. The
department shall provide a copy of the order to the board of
county commissioners, probate judge, county auditor, and president
and superintendent of the county board. The department shall
specify in the order the medicaid local administrative authority~~ 1928
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~~that the department is terminating, the reason for the~~ 1941
~~termination, and the county board's option and responsibilities~~ 1942
~~under this division.~~ 1943

~~A county board whose medicaid local administrative authority~~ 1944
~~is terminated may, no later than thirty days after the department~~ 1945
~~issues the termination order, recommend to the department that~~ 1946
~~another county board that has not had any of its medicaid local~~ 1947
~~administrative authority terminated or another entity the~~ 1948
~~department approves administer the services for which the county~~ 1949
~~board's medicaid local administrative authority is terminated. The~~ 1950
~~department may contract with the other county board or entity to~~ 1951
~~administer the services. If the department enters into such a~~ 1952
~~contract, the county board shall adopt a resolution giving the~~ 1953
~~other county board or entity full medicaid local administrative~~ 1954
~~authority over the services that the other county board or entity~~ 1955
~~is to administer. The other county board or entity shall be known~~ 1956
~~as the contracting authority.~~ 1957

~~If the county board does not submit a recommendation to the~~ 1958
~~department regarding a contracting authority within the required~~ 1959
~~time or the department rejects the county board's recommendation,~~ 1960
~~the department shall appoint an administrative receiver to~~ 1961
~~administer the services for which the county board's medicaid~~ 1962
~~local administrative authority is terminated. To the extent~~ 1963
~~necessary for the department to appoint an administrative~~ 1964
~~authority, the department may utilize employees of the department,~~ 1965
~~management personnel from another county board, or other~~ 1966
~~individuals who are not employed by or affiliated with in any~~ 1967
~~manner a person or government entity that provides home and~~ 1968
~~community-based services, medicaid case management services, or~~ 1969
~~habilitation center services pursuant to a contract with any~~ 1970
~~county board. The administrative receiver shall assume full~~ 1971
~~administrative responsibility for the county board's services for~~ 1972

~~which the county board's medicaid local administrative authority~~ 1973
~~is terminated.~~ 1974

~~The contracting authority or administrative receiver shall~~ 1975
~~develop and submit to the department a plan of correction to~~ 1976
~~remediate the problems that caused the department to issue the~~ 1977
~~termination order. If, after reviewing the plan, the department~~ 1978
~~approves it, the contracting authority or administrative receiver~~ 1979
~~shall implement the plan.~~ 1980

~~The county board shall transfer control of state and federal~~ 1981
~~funds it is otherwise eligible to receive for the services for~~ 1982
~~which the county board's medicaid local administrative authority~~ 1983
~~is terminated and funds the county board may use under division~~ 1984
~~(B) of section 5126.056 of the Revised Code to pay the nonfederal~~ 1985
~~share of the services that the county board is required by~~ 1986
~~division (A) of that section to pay. The county board shall~~ 1987
~~transfer control of the funds to the contracting authority or~~ 1988
~~administrative receiver administering the services. The amount the~~ 1989
~~county board shall transfer shall be the amount necessary for the~~ 1990
~~contracting authority or administrative receiver to fulfill its~~ 1991
~~duties in administering the services, including its duties to pay~~ 1992
~~its personnel for time worked, travel, and related matters. If the~~ 1993
~~county board fails to make the transfer, the department may~~ 1994
~~withhold the state and federal funds from the county board and~~ 1995
~~bring a mandamus action against the county board in the court of~~ 1996
~~common pleas of the county served by the county board or in the~~ 1997
~~Franklin county court of common pleas. The mandamus action may not~~ 1998
~~require that the county board transfer any funds other than the~~ 1999
~~funds the county board is required by division (G)(2) of this~~ 2000
~~section to transfer.~~ 2001

~~The contracting authority or administrative receiver has the~~ 2002
~~right to authorize the payment of bills in the same manner that~~ 2003
~~the county board may authorize payment of bills under this chapter~~ 2004

~~and section 319.16 of the Revised Code.~~

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Sec. 5126.056. (A) The department of mental retardation and developmental disabilities shall take action under division (B) of this section against a county board of mental retardation and developmental disabilities if any of the following are the case:

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(1) The county board fails to submit to the department all the components of its three-year plan required by section 5126.054 of the Revised Code within the time required by division (B) of that section.

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(2) The department disapproves the county board's three-year plan under section 5123.046 of the Revised Code.

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(3) The county board fails, as required by division (C) of section 5126.054 of the Revised Code, to update and renew its three-year plan in accordance with a schedule the department develops under that section.

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(4) The county board fails to implement its initial or renewed three-year plan approved by the department.

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(5) The county board fails to correct a deficiency within the time required by division (G) of section 5126.055 of the Revised Code to the satisfaction of the department.

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(6) The county board fails to submit an acceptable plan of correction to the department within the time required by division (G)(2) of section 5126.055 of the Revised Code.

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(B) If required by division (A) of this section to take action against a county board, the department shall issue an order terminating the county board's medicaid local administrative authority over all or part of home and community-based services, medicaid case management services, habilitation center services, all or part of two of those services, or all or part of all three of those services. The department shall provide a copy of the

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order to the board of county commissioners, probate judge, county auditor, and president and superintendent of the county board. The department shall specify in the order the medicaid local administrative authority that the department is terminating, the reason for the termination, and the county board's option and responsibilities under this division. 2035
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A county board whose medicaid local administrative authority is terminated may, not later than thirty days after the department issues the termination order, recommend to the department that another county board that has not had any of its medicaid local administrative authority terminated or another entity the department approves administer the services for which the county board's medicaid local administrative authority is terminated. The department may contract with the other county board or entity to administer the services. If the department enters into such a contract, the county board shall adopt a resolution giving the other county board or entity full medicaid local administrative authority over the services that the other county board or entity is to administer. The other county board or entity shall be known as the contracting authority. 2041
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If the department rejects the county board's recommendation regarding a contracting authority, the county board may appeal the rejection under section 5123.043 of the Revised Code. 2055
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If the county board does not submit a recommendation to the department regarding a contracting authority within the required time or the department rejects the county board's recommendation and the rejection is upheld pursuant to an appeal, if any, under section 5123.043 of the Revised Code, the department shall appoint an administrative receiver to administer the services for which the county board's medicaid local administrative authority is terminated. To the extent necessary for the department to appoint an administrative receiver, the department may utilize employees 2058
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of the department, management personnel from another county board, 2067
or other individuals who are not employed by or affiliated with in 2068
any manner a person that provides home and community-based 2069
services, medicaid case management services, or habilitation 2070
center services pursuant to a contract with any county board. The 2071
administrative receiver shall assume full administrative 2072
responsibility for the county board's services for which the 2073
county board's medicaid local administrative authority is 2074
terminated. 2075

The contracting authority or administrative receiver shall 2076
develop and submit to the department a plan of correction to 2077
remediate the problems that caused the department to issue the 2078
termination order. If, after reviewing the plan, the department 2079
approves it, the contracting authority or administrative receiver 2080
shall implement the plan. 2081

The county board shall transfer control of state and federal 2082
funds it is otherwise eligible to receive for the services for 2083
which the county board's medicaid local administrative authority 2084
is terminated and funds the county board may use under division 2085
(B) of section 5126.057 of the Revised Code to pay the nonfederal 2086
share of the services that the county board is required by 2087
division (A) of that section to pay. The county board shall 2088
transfer control of the funds to the contracting authority or 2089
administrative receiver administering the services. The amount the 2090
county board shall transfer shall be the amount necessary for the 2091
contracting authority or administrative receiver to fulfill its 2092
duties in administering the services, including its duties to pay 2093
its personnel for time worked, travel, and related matters. If the 2094
county board fails to make the transfer, the department may 2095
withhold the state and federal funds from the county board and 2096
bring a mandamus action against the county board in the court of 2097
common pleas of the county served by the county board or in the 2098

Franklin county court of common pleas. The mandamus action may not 2099
require that the county board transfer any funds other than the 2100
funds the county board is required by division (B) of this section 2101
to transfer. 2102

The contracting authority or administrative receiver has the 2103
right to authorize the payment of bills in the same manner that 2104
the county board may authorize payment of bills under this chapter 2105
and section 319.16 of the Revised Code. 2106

Sec. ~~5126.056~~ 5126.057. (A) A county board of mental 2107
retardation and developmental disabilities that has medicaid local 2108
administrative authority under division (A) of section 5126.055 of 2109
the Revised Code for home and community-based services shall pay 2110
the nonfederal share of medicaid expenditures for such services 2111
provided to an individual with mental retardation or other 2112
developmental disability who the county board determines under 2113
section 5126.041 of the Revised Code is eligible for county board 2114
services unless division (C)(2) of section 5123.047 of the Revised 2115
Code requires the department of mental retardation and 2116
developmental disabilities to pay the nonfederal share. 2117

A county board that has medicaid local administrative 2118
authority under division (B) of section 5126.055 of the Revised 2119
Code for medicaid case management services shall pay the 2120
nonfederal share of medicaid expenditures for such services 2121
provided to an individual with mental retardation or other 2122
developmental disability who the county board determines under 2123
section 5126.041 of the Revised Code is eligible for county board 2124
services unless division (B)(2) of section 5123.047 of the Revised 2125
Code requires the department of mental retardation and 2126
developmental disabilities to pay the nonfederal share. 2127

A county board shall pay the nonfederal share of medicaid 2128
expenditures for habilitation center services when required to do 2129

so by division (D) of section 5111.041 of the Revised Code. 2130

(B) A county board may use the following funds to pay the 2131
nonfederal share of the services that the county board is required 2132
by division (A) of this section to pay: 2133

(1) To the extent consistent with the levy that generated the 2134
taxes, the following taxes: 2135

(a) Taxes levied pursuant to division (L) of section 5705.19 2136
of the Revised Code and section 5705.222 of the Revised Code; 2137

(b) Taxes levied under section 5705.191 of the Revised Code 2138
that the board of county commissioners allocates to the county 2139
board to pay the nonfederal share of the services. 2140

(2) Funds that the department of mental retardation and 2141
developmental disabilities distributes to the county board under 2142
sections 5126.11, 5126.12, 5126.15, 5126.18, and 5126.44 of the 2143
Revised Code; 2144

(3) Funds that the department allocates to the county board 2145
for habilitation center services provided under section 5111.041 2146
of the Revised Code; 2147

(4) Earned federal revenue funds the county board receives 2148
for medicaid services the county board provides pursuant to the 2149
county board's valid medicaid provider agreement. 2150

(C) If by December 31, 2001, the United States secretary of 2151
health and human services approves at least five hundred more 2152
slots for home and community-based services for calendar year 2002 2153
than were available for calendar year 2001, each county board 2154
shall provide, by the last day of calendar year 2001, assurances 2155
to the department of mental retardation and developmental 2156
disabilities that the county board will have for calendar year 2157
2002 at least one-third of the value of one-half, effective mill 2158
levied in the county the preceding year available to pay the 2159

nonfederal share of the services that the county board is required 2160
by division (A) of this section to pay. 2161

If by December 31, 2002, the United States secretary approves 2162
at least five hundred more slots for home and community-based 2163
services for calendar year 2003 than were available for calendar 2164
year 2002, each county board shall provide, by the last day of 2165
calendar year 2002, assurances to the department that the county 2166
board will have for calendar year 2003 at least two-thirds of the 2167
value of one-half, effective mill levied in the county the 2168
preceding year available to pay the nonfederal share of the 2169
services that the county board is required by division (A) of this 2170
section to pay. 2171

If by December 31, 2003, the United States secretary approves 2172
at least five hundred more slots for home and community-based 2173
services for calendar year 2004 than were available for calendar 2174
year 2003, each county board shall provide, by the last day of 2175
calendar year 2003 and each calendar year thereafter, assurances 2176
to the department that the county board will have for calendar 2177
year 2004 and each calendar year thereafter at least the value of 2178
one-half, effective mill levied in the county the preceding year 2179
available to pay the nonfederal share of the services that the 2180
county board is required by division (A) of this section to pay. 2181

(D) Each year, each county board shall adopt a resolution 2182
specifying the amount of funds it will use in the next year to pay 2183
the nonfederal share of the services that the county board is 2184
required by division (A) of this section to pay. The amount 2185
specified shall be adequate to assure that the services will be 2186
available in the county in a manner that conforms to all 2187
applicable state and federal laws. A county board shall state in 2188
its resolution that the payment of the nonfederal share represents 2189
an ongoing financial commitment of the county board. A county 2190
board shall adopt the resolution in time for the county auditor to 2191

make the determination required by division (E) of this section. 2192

(E) Each year, a county auditor shall determine whether the 2193
amount of funds a county board specifies in the resolution it 2194
adopts under division (D) of this section will be available in the 2195
following year for the county board to pay the nonfederal share of 2196
the services that the county board is required by division (A) of 2197
this section to pay. The county auditor shall make the 2198
determination not later than the last day of the year before the 2199
year in which the funds are to be used. 2200

Sec. 5126.06. (A) Except as provided in division (B) of this 2201
section and section ~~5126.035~~ 5126.036 of the Revised Code, any 2202
person who has a complaint involving any of the programs, 2203
services, policies, or administrative practices of a county board 2204
of mental retardation and developmental disabilities or any of the 2205
entities under contract with the county board, may file a 2206
complaint with the board. Prior to commencing a civil action 2207
regarding the complaint, a person shall attempt to have the 2208
complaint resolved through the administrative resolution process 2209
established in the rules adopted under section 5123.043 of the 2210
Revised Code. After exhausting the administrative resolution 2211
process, the person may commence a civil action if the complaint 2212
is not settled to the person's satisfaction. 2213

(B) An employee of a county board may not file under this 2214
section a complaint related to the terms and conditions of 2215
employment of the employee. 2216

Sec. 5126.14. The entity responsible for the habilitation 2217
management included in adult day habilitation services, the 2218
program management included in residential services, and the 2219
program management included in supported living shall provide 2220
administrative oversight by doing all of the following: 2221

(A) Having available supervisory personnel to monitor and 2222
ensure implementation of all interventions in accordance with 2223
every individual service plan implemented by the staff who work 2224
with the individuals receiving the services; 2225

(B) Providing appropriate training and technical assistance 2226
for all staff who work with the individuals receiving services; 2227

(C) Communicating with service and support administration 2228
staff for the purpose of coordinating activities to ensure that 2229
services are provided to individuals in accordance with individual 2230
service plans and intended outcomes; 2231

(D) Monitoring for unusual and major unusual incidents and 2232
cases of abuse, neglect, ~~or~~ exploitation, or misappropriation of
funds involving the individual under the care of staff who are 2233
providing the services; taking immediate actions as necessary to 2234
maintain the health, safety, and welfare of the individuals 2235
receiving the services; and providing notice of unusual and major 2236
unusual incidents and suspected cases of abuse, neglect, ~~or~~ 2237
exploitation, or misappropriation of funds to the ~~investigative~~ 2238
~~agent for the~~ county board of mental retardation and developmental 2239
disabilities; 2240
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(E) Performing other administrative duties as required by 2242
state or federal law or by the county board of mental retardation 2243
and developmental disabilities through contracts with providers. 2244

Sec. 5126.15. (A) A county board of mental retardation and 2245
developmental disabilities shall provide service and support 2246
administration to each individual three years of age or older who 2247
is eligible for ~~other services of the board~~ service and support
administration if the individual requests, or a person on the 2248
individual's behalf requests, service and support administration. 2249
A board shall provide service and support administration to each 2250
individual receiving home and community-based services. A board 2251
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may provide, in accordance with the service coordination 2253
requirements of 34 C.F.R. 303.23, service and support 2254
administration to an individual under three years of age eligible 2255
for early intervention services under 34 C.F.R. part 303. A board 2256
may provide service and support administration to an individual 2257
who is not eligible for other services of the board. Service and 2258
support administration shall be provided in accordance with rules 2259
adopted under section 5126.08 of the Revised Code. 2260

A board may provide service and support administration by 2261
directly employing service and support administrators or by 2262
contracting with entities for the performance of service and 2263
support administration. Individuals employed or under contract as 2264
service and support administrators shall not be in the same 2265
collective bargaining unit as employees who perform duties that 2266
are not administrative. 2267

Individuals employed by a board as service and support 2268
administrators shall not be assigned responsibilities for 2269
implementing other services for individuals and shall not be 2270
employed by or serve in a decision-making or policy-making 2271
capacity for any other entity that provides programs or services 2272
to individuals with mental retardation or developmental 2273
disabilities. An individual employed as a conditional status 2274
service and support administrator shall perform the duties of 2275
service and support administration only under the supervision of a 2276
management employee who is a service and support administration 2277
supervisor or a professional employee who is a service and support 2278
administrator. 2279

(B) The individuals employed by or under contract with a 2280
board to provide service and support administration shall do all 2281
of the following: 2282

(1) Establish an individual's eligibility for the services of 2283
the county board of mental retardation and developmental 2284

disabilities;	2285
(2) Assess individual needs for services;	2286
(3) Develop individual service plans with the active participation of the individual to be served, other persons selected by the individual, and, when applicable, the provider selected by the individual, and recommend the plans for approval by the department of mental retardation and developmental disabilities when services included in the plans are funded through medicaid;	2287 2288 2289 2290 2291 2292 2293
(4) Establish budgets for services based on the individual's assessed needs and preferred ways of meeting those needs;	2294 2295
(5) Assist individuals in making selections from among the providers they have chosen;	2296 2297
(6) Ensure that services are effectively coordinated and provided by appropriate providers;	2298 2299
(7) Establish and implement an ongoing system of monitoring the implementation of individual service plans to achieve consistent implementation and the desired outcomes for the individual;	2300 2301 2302 2303
(8) Perform quality assurance reviews as a distinct function of service and support administration;	2304 2305
(9) Incorporate the results of quality assurance reviews and identified trends and patterns of unusual incidents and major unusual incidents into amendments of an individual's service plan for the purpose of improving and enhancing the quality and appropriateness of services rendered to the individual;	2306 2307 2308 2309 2310
(10) Ensure that each individual receiving services has a designated person who is responsible on a continuing basis for providing the individual with representation, advocacy, advice, and assistance related to the day-to-day coordination of services	2311 2312 2313 2314

in accordance with the individual's service plan. The service and support administrator shall give the individual receiving services an opportunity to designate the person to provide daily representation. If the individual declines to make a designation, the administrator shall make the designation. In either case, the individual receiving services may change at any time the person designated to provide daily representation.

(C) Subject to available funds, the department of mental retardation and developmental disabilities shall pay a county board an annual subsidy for service and support administration. The amount of the subsidy shall be equal to the greater of twenty thousand dollars or two hundred dollars times the board's certified average daily membership. The payments shall be made in semiannual installments, which shall be made no later than the thirty-first day of August and the thirty-first day of January. Funds received shall be used solely for service and support administration.

Sec. 5126.17. (A)(1) ~~Annually, on~~ On the request of the director of mental retardation and developmental disabilities, the tax commissioner shall provide to the department of mental retardation and developmental disabilities information specifying each county's taxable value.

(2) On request of the director, each county auditor shall submit a certified report to the department specifying the county's taxes and the aggregate rate of tax authorized to be levied by the board of county commissioners pursuant to division (L) of section 5705.19 and section 5705.222 of the Revised Code or the aggregate rate of tax authorized pursuant to that division and that section and certified to the county auditor under section 319.30 of the Revised Code. Tax information submitted by the county auditor shall be obtained from the most recent tax year for

which the information is available. 2346

(3) The director may request any other tax information 2347
necessary for purposes of sections 5126.16 to 5126.18 of the 2348
Revised Code. 2349

(B) Using the information obtained under this section and 2350
each board's enrollment, the department shall annually determine 2351
the hypothetical statewide average revenue per enrollee and, for 2352
each county board, the hypothetical local revenue per enrollee. 2353
~~This division applies only in those years in which the director~~ 2354
~~determines that the department will implement section 5126.18 of~~ 2355
~~the Revised Code.~~ 2356

Sec. 5126.18. (A) The department of mental retardation and 2357
developmental disabilities shall pay to each county board of 2358
mental retardation and developmental disabilities whose 2359
hypothetical local revenue per enrollee is less than the 2360
hypothetical statewide average revenue per enrollee the amount 2361
computed under division (B) of this section. Payments shall be 2362
made on or before the thirtieth day of September. 2363

(B) Except as provided in division (C) of this section, the 2364
amount to be paid to a county board shall be equal to the 2365
following: 2366

(1) If the county board's effective tax rate is equal to or 2367
greater than one mill, the product obtained by multiplying the 2368
following two quantities: 2369

(a) The amount by which the hypothetical statewide average 2370
revenue per enrollee exceeds the county board's hypothetical local 2371
revenue per enrollee; 2372

(b) The county board's infant and adult enrollment. 2373

(2) If the county board's effective tax rate is less than one 2374
mill, the product obtained by multiplying the following three 2375

quantities:	2376
(a) The amount by which the hypothetical statewide average revenue per enrollee exceeds the county board's hypothetical local revenue per enrollee;	2377 2378 2379
(b) The county board's infant and adult enrollment;	2380
(c) The quotient obtained by dividing the county board's effective tax rate by one mill.	2381 2382
(C)(1) For each individual who is enrolled in active treatment under the community alternative funding system as defined in section 5126.12 of the Revised Code, the department may reduce the portion of the payment made under this section for that individual by fifty per cent or less.	2383 2384 2385 2386 2387
(2) If, in any year, an appropriation by the general assembly to the department for purposes of this section is less than the total amount required to make, in full, the payments as determined under and authorized by this section, the department shall pay each county board the same percentage of the board's payment as determined under this section without regard to this division that the amount of the appropriation available for purposes of this section is of the total amount of payments as determined under this section without regard to this division.	2388 2389 2390 2391 2392 2393 2394 2395 2396
(3) Payments made to a county board pursuant to this section shall not exceed thirty per cent of the payments made to that board pursuant to section 5126.12 of the Revised Code.	2397 2398 2399
(D) Payments made under this section are supplemental to all other state or federal funds for which county boards are eligible and shall be made from funds appropriated for purposes of this section. A county board shall use the payments solely to pay the nonfederal share of medicaid expenditures that division (A) of section 5126.056 <u>5126.057</u> of the Revised Code requires the county board to pay.	2400 2401 2402 2403 2404 2405 2406

(E) Each county board that receives a payment under this 2407
section shall, for each year it receives a payment, certify to the 2408
department that it will make a good faith effort to obtain 2409
revenues, including federal funds, for services to individuals 2410
included in its infant and adult enrollment. 2411

Sec. 5126.19. (A) The director of mental retardation and 2412
developmental disabilities may grant temporary funding from the 2413
community mental retardation and developmental disabilities trust 2414
fund based on allocations to a county board boards of mental 2415
retardation and developmental disabilities. ~~With the consent of~~ 2416
~~the county board, the~~ The director may distribute all or part of 2417
the funding directly to a county board, the persons who provide 2418
the services for which the funding is granted, or persons with 2419
mental retardation or developmental disabilities who are to 2420
receive those services. 2421

(B) Funding granted under this section shall be granted 2422
according to the availability of moneys in the fund and priorities 2423
established by the director. Funding may be granted for any of the 2424
following purposes: 2425

(1) Behavioral or short-term interventions for persons with 2426
mental retardation or developmental disabilities that assist them 2427
in remaining in the community by preventing institutionalization; 2428

(2) Emergency respite care services, as defined in section 2429
5126.11 of the Revised Code; 2430

(3) Family support services provided under section 5126.11 of 2431
the Revised Code; 2432

(4) Supported living, as defined in section 5126.01 of the 2433
Revised Code; 2434

(5) Staff training for county board employees, employees of 2435
providers of residential services as defined in section 5126.01 of 2436

the Revised Code, and other personnel under contract with a county board, to provide the staff with necessary training in serving mentally retarded or developmentally disabled persons in the community;

(6) Short-term provision of early childhood services provided under section 5126.05, adult services provided under sections 5126.05 and 5126.051, and service and support administration provided under section 5126.15 of the Revised Code, when local moneys are insufficient to meet the need for such services due to the successive failure within a two-year period of three or more proposed levies for the services;

(7) Contracts with providers of residential services to maintain persons with mental retardation and developmental disabilities in their programs and avoid institutionalization.

(C) If the trust fund contains more than ten million dollars on the first day of July the director shall use one million dollars for payments under section 5126.12 of the Revised Code, one million dollars for payments under section 5126.18 of the Revised Code, and two million dollars for payments under section 5126.44 of the Revised Code. Distributions of funds under this division shall be made prior to August 31 of the state fiscal year in which the funds are available. The funds shall be ~~distributed~~ allocated to a county board in an amount equal to the same percentage of the total amount ~~distributed for the services that~~ allocated to the county board ~~received in~~ the immediately preceding state fiscal year.

Sec. 5126.221. Each county board of mental retardation and developmental disabilities shall employ at least one investigative agent or contract with a person or government entity, including another county board of mental retardation and developmental disabilities or a regional council established under section

5126.13 of the Revised Code, for the services of an investigative agent. Neither a county board nor a person or government entity with which a county board contracts for the services of an investigative agent shall assign any duties to an investigative agent other than conducting investigations under section 5126.313 of the Revised Code.

All investigative agents shall be trained in civil and criminal investigatory practices ~~and~~. The person responsible for supervising the work of the investigative agents shall report directly to a county board's superintendent regarding the investigative agents. ~~No~~

No investigative agent shall do anything that interferes with the investigative agent's objectivity in conducting investigations under section 5126.313 of the Revised Code.

Sec. 5126.357. (A) As used in this section:

(1) "In-home care" means the supportive services provided within the home of an individual who receives funding for the services as a county board client, including any client who receives residential services funded through home ~~or~~ and community-based services, family support services provided under section 5126.11 of the Revised Code, or supported living provided in accordance with sections 5126.41 to 5126.47 of the Revised Code. "In-home care" includes care that is provided outside a client's home in places incidental to the home, and while traveling to places incidental to the home, except that "in-home care" does not include care provided in the facilities of a county board of mental retardation and developmental disabilities or care provided in schools.

(2) "Parent" means either parent of a child, including an adoptive parent but not a foster parent.

(3) "Unlicensed in-home care worker" means an individual who provides in-home care but is not a health care professional. A county board worker may be an unlicensed in-home care worker.

(4) "Family member" means a parent, sibling, spouse, son, daughter, grandparent, aunt, uncle, cousin, or guardian of the individual with mental retardation or a developmental disability if the individual with mental retardation or developmental disabilities lives with the person and is dependent on the person to the extent that, if the supports were withdrawn, another living arrangement would have to be found.

(B) Except as provided in division (D) of this section, a family member of an individual with mental retardation or a developmental disability may authorize an unlicensed in-home care worker to give or apply prescribed medication or perform other health care tasks as part of the in-home care provided to the individual, if the family member is the primary supervisor of the care and the unlicensed in-home care worker has been selected by the family member and is under the direct supervision of the family member. Sections 4723.62 and 5126.351 to 5126.356 of the Revised Code do not apply to the in-home care authorized by a family member under this section. Instead, a family member shall obtain a prescription, if applicable, and written instructions from a health care professional for the care to be provided to the individual. The family member shall authorize the unlicensed in-home care worker to provide the care by preparing a written document granting the authority. The family member shall provide the unlicensed in-home care worker with appropriate training and written instructions in accordance with the instructions obtained from the health care professional.

(C) A family member who authorizes an unlicensed in-home care worker to give or apply prescribed medication or perform other health care tasks retains full responsibility for the health and

safety of the individual receiving the care and for ensuring that
the worker provides the care appropriately and safely. No entity
that funds or monitors the provision of in-home care may be held
liable for the results of the care provided under this section by
an unlicensed in-home care worker, including such entities as the
county board of mental retardation and developmental disabilities,
any other entity that employs an unlicensed in-home care worker,
and the department of mental retardation and developmental
disabilities.

An unlicensed in-home care worker who is authorized under
this section by a family member to provide care to an individual
may not be held liable for any injury caused in providing the
care, unless the worker provides the care in a manner that is not
in accordance with the training and instructions received or the
worker acts in a manner that constitutes wanton or reckless
misconduct.

(D) A county board of mental retardation and developmental
disabilities may evaluate the authority granted by a family member
under this section to an unlicensed in-home care worker at any
time it considers necessary and shall evaluate the authority on
receipt of a complaint. If the board determines that a family
member has acted in a manner that is inappropriate for the health
and safety of the individual receiving the services, the
authorization granted by the family member to an unlicensed
in-home care worker is void, and the family member may not
authorize other unlicensed in-home care workers to provide the
care. In making such a determination, the board shall use
appropriately licensed health care professionals and shall provide
the family member an opportunity to file a complaint under section
5126.06 of the Revised Code.

Sec. 5705.44. When contracts or leases run beyond the

termination of the fiscal year in which they are made, the fiscal 2561
officer of the taxing authority shall make a certification for the 2562
amount required to meet the obligation of such contract or lease 2563
maturing in such fiscal year. The amount of the obligation under 2564
such contract or lease remaining unfulfilled at the end of a 2565
fiscal year, and which will become payable during the next fiscal 2566
year, shall be included in the annual appropriation measure for 2567
the next year as a fixed charge. 2568

The certificate required by section 5705.41 of the Revised 2569
Code as to money in the treasury shall not be required for 2570
contracts on which payments are to be made from the earnings of a 2571
publicly operated water works or public utility, but in the case 2572
of any such contract made without such certification, no payment 2573
shall be made on account thereof, and no claim or demand thereon 2574
shall be recoverable, except out of such earnings. That 2575
certificate also shall not be required if requiring the 2576
certificate makes it impossible for a county board of mental 2577
retardation and developmental disabilities to pay the nonfederal 2578
share of medicaid expenditures that the county board is required 2579
by division (A) of section ~~5126.056~~ 5126.057 of the Revised Code 2580
to pay. 2581

Sec. 5733.04. As used in this chapter: 2582

(A) "Issued and outstanding shares of stock" applies to 2583
nonprofit corporations, as provided in section 5733.01 of the 2584
Revised Code, and includes, but is not limited to, membership 2585
certificates and other instruments evidencing ownership of an 2586
interest in such nonprofit corporations, and with respect to a 2587
financial institution that does not have capital stock, "issued 2588
and outstanding shares of stock" includes, but is not limited to, 2589
ownership interests of depositors in the capital employed in such 2590
an institution. 2591

(B) "Taxpayer" means a corporation subject to the tax imposed by section 5733.06 of the Revised Code.	2592 2593
(C) "Resident" means a corporation organized under the laws of this state.	2594 2595
(D) "Commercial domicile" means the principal place from which the trade or business of the taxpayer is directed or managed.	2596 2597 2598
(E) "Taxable year" means the period prescribed by division (A) of section 5733.031 of the Revised Code upon the net income of which the value of the taxpayer's issued and outstanding shares of stock is determined under division (B) of section 5733.05 of the Revised Code or the period prescribed by division (A) of section 5733.031 of the Revised Code that immediately precedes the date as of which the total value of the corporation is determined under division (A) or (C) of section 5733.05 of the Revised Code.	2599 2600 2601 2602 2603 2604 2605 2606
(F) "Tax year" means the calendar year in and for which the tax imposed by section 5733.06 of the Revised Code is required to be paid.	2607 2608 2609
(G) "Internal Revenue Code" means the "Internal Revenue Code of 1986," 100 Stat. 2085, 26 U.S.C.A. 1, as amended.	2610 2611
(H) "Federal income tax" means the income tax imposed by the Internal Revenue Code.	2612 2613
(I) Except as provided in section 5733.058 of the Revised Code, "net income" means the taxpayer's taxable income before operating loss deduction and special deductions, as required to be reported for the taxpayer's taxable year under the Internal Revenue Code, subject to the following adjustments:	2614 2615 2616 2617 2618
(1)(a) Deduct <u>Except as otherwise provided in division (I)(1)(d) of this section, deduct</u> any net operating loss incurred in any taxable years ending in 1971 or thereafter but exclusive of	2619 2620 2621

any net operating loss incurred in taxable years ending prior to 2622
January 1, 1971. This deduction shall not be allowed in any tax 2623
year commencing before December 31, 1973, but shall be carried 2624
over and allowed in tax years commencing after December 31, 1973, 2625
until fully utilized in the next succeeding taxable year or years 2626
in which the taxpayer has net income, but in no case for more than 2627
the designated carryover period as described in division (I)(1)(b) 2628
of this section. The amount of such net operating loss, as 2629
determined under the allocation and apportionment provisions of 2630
section 5733.051 and division (B) of section 5733.05 of the 2631
Revised Code for the year in which the net operating loss occurs, 2632
shall be deducted from net income, as determined under the 2633
allocation and apportionment provisions of section 5733.051 and 2634
division (B) of section 5733.05 of the Revised Code, to the extent 2635
necessary to reduce net income to zero with the remaining unused 2636
portion of the deduction, if any, carried forward to the remaining 2637
years of the designated carryover period as described in division 2638
(I)(1)(b) of this section, or until fully utilized, whichever 2639
occurs first. 2640

(b) For losses incurred in taxable years ending on or before 2641
December 31, 1981, the designated carryover period shall be the 2642
five consecutive taxable years after the taxable year in which the 2643
net operating loss occurred. For losses incurred in taxable years 2644
ending on or after January 1, 1982, the designated carryover 2645
period shall be the fifteen consecutive taxable years after the 2646
taxable year in which the net operating loss occurs. 2647

(c) The tax commissioner may require a taxpayer to furnish 2648
any information necessary to support a claim for deduction under 2649
division (I)(1)(a) of this section and no deduction shall be 2650
allowed unless the information is furnished. 2651

(d)(i) For corporations having a taxable year ending on or 2652
after November 30, 2001, but ending prior to January 8, 2002, the 2653

deduction provided by division (I)(1)(a) of this section shall not 2654
be allowed for tax year 2002, but the amount of the remaining 2655
unused portion of the net operating loss deduction and the 2656
remaining years of the designated carryover period shall be 2657
computed as if the corporation were allowed the deduction for the 2658
tax year without regard to division (I)(1)(d)(i) of this section. 2659

(ii) The deduction provided by division (I)(1)(a) of this 2660
section shall not be allowed for tax year 2003, but the amount of 2661
the remaining unused portion of the net operating loss deduction 2662
and the remaining years of the designated carryover period shall 2663
be computed as if the corporation were allowed the deduction for 2664
the tax year without regard to division (I)(1)(d)(ii) of this 2665
section. 2666

(iii) For corporations not described in division (I)(1)(d)(i) 2667
of this section, the deduction provided by division (I)(1)(a) of 2668
this section shall not be allowed for tax year 2004, but the 2669
amount of the remaining unused portion of the net operating loss 2670
deduction and the remaining years of the designated carryover 2671
period shall be computed as if the corporation were allowed the 2672
deduction for the tax year without regard to division 2673
(I)(1)(d)(iii) of this section. 2674

(2) Deduct any amount included in net income by application 2675
of section 78 or 951 of the Internal Revenue Code, amounts 2676
received for royalties, technical or other services derived from 2677
sources outside the United States, and dividends received from a 2678
subsidiary, associate, or affiliated corporation that neither 2679
transacts any substantial portion of its business nor regularly 2680
maintains any substantial portion of its assets within the United 2681
States. For purposes of determining net foreign source income 2682
deductible under division (I)(2) of this section, the amount of 2683
gross income from all such sources other than income derived by 2684
application of section 78 or 951 of the Internal Revenue Code 2685

shall be reduced by: 2686

(a) The amount of any reimbursed expenses for personal 2687
services performed by employees of the taxpayer for the 2688
subsidiary, associate, or affiliated corporation; 2689

(b) Ten per cent of the amount of royalty income and 2690
technical assistance fees; 2691

(c) Fifteen per cent of the amount of dividends and all other 2692
income. 2693

The amounts described in divisions (I)(2)(a) to (c) of this 2694
section are deemed to be the expenses attributable to the 2695
production of deductible foreign source income unless the taxpayer 2696
shows, by clear and convincing evidence, less actual expenses, or 2697
the tax commissioner shows, by clear and convincing evidence, more 2698
actual expenses. 2699

(3) Add any loss or deduct any gain resulting from the sale, 2700
exchange, or other disposition of a capital asset, or an asset 2701
described in section 1231 of the Internal Revenue Code, to the 2702
extent that such loss or gain occurred prior to the first taxable 2703
year on which the tax provided for in section 5733.06 of the 2704
Revised Code is computed on the corporation's net income. For 2705
purposes of division (I)(3) of this section, the amount of the 2706
prior loss or gain shall be measured by the difference between the 2707
original cost or other basis of the asset and the fair market 2708
value as of the beginning of the first taxable year on which the 2709
tax provided for in section 5733.06 of the Revised Code is 2710
computed on the corporation's net income. At the option of the 2711
taxpayer, the amount of the prior loss or gain may be a percentage 2712
of the gain or loss, which percentage shall be determined by 2713
multiplying the gain or loss by a fraction, the numerator of which 2714
is the number of months from the acquisition of the asset to the 2715
beginning of the first taxable year on which the fee provided in 2716

section 5733.06 of the Revised Code is computed on the 2717
corporation's net income, and the denominator of which is the 2718
number of months from the acquisition of the asset to the sale, 2719
exchange, or other disposition of the asset. The adjustments 2720
described in this division do not apply to any gain or loss where 2721
the gain or loss is recognized by a qualifying taxpayer, as 2722
defined in section 5733.0510 of the Revised Code, with respect to 2723
a qualifying taxable event, as defined in that section. 2724

(4) Deduct the dividend received deduction provided by 2725
section 243 of the Internal Revenue Code. 2726

(5) Deduct any interest or interest equivalent on public 2727
obligations and purchase obligations to the extent included in 2728
federal taxable income. As used in divisions (I)(5) and (6) of 2729
this section, "public obligations," "purchase obligations," and 2730
"interest or interest equivalent" have the same meanings as in 2731
section 5709.76 of the Revised Code. 2732

(6) Add any loss or deduct any gain resulting from the sale, 2733
exchange, or other disposition of public obligations to the extent 2734
included in federal taxable income. 2735

(7) To the extent not otherwise allowed, deduct any dividends 2736
or distributions received by a taxpayer from a public utility, 2737
excluding an electric company, if the taxpayer owns at least 2738
eighty per cent of the issued and outstanding common stock of the 2739
public utility. As used in division (I)(7) of this section, 2740
"public utility" means a public utility as defined in Chapter 2741
5727. of the Revised Code, whether or not the public utility is 2742
doing business in the state. 2743

(8) To the extent not otherwise allowed, deduct any dividends 2744
received by a taxpayer from an insurance company, if the taxpayer 2745
owns at least eighty per cent of the issued and outstanding common 2746
stock of the insurance company. As used in division (I)(8) of this 2747

section, "insurance company" means an insurance company that is 2748
taxable under Chapter 5725. or 5729. of the Revised Code. 2749
2750

(9) Deduct expenditures for modifying existing buildings or 2751
structures to meet American national standards institute standard 2752
A-117.1-1961 (R-1971), as amended; provided, that no deduction 2753
shall be allowed to the extent that such deduction is not 2754
permitted under federal law or under rules of the tax 2755
commissioner. Those deductions as are allowed may be taken over a 2756
period of five years. The tax commissioner shall adopt rules under 2757
Chapter 119. of the Revised Code establishing reasonable 2758
limitations on the extent that expenditures for modifying existing 2759
buildings or structures are attributable to the purpose of making 2760
the buildings or structures accessible to and usable by physically 2761
handicapped persons. 2762

(10) Deduct the amount of wages and salaries, if any, not 2763
otherwise allowable as a deduction but that would have been 2764
allowable as a deduction in computing federal taxable income 2765
before operating loss deduction and special deductions for the 2766
taxable year, had the targeted jobs credit allowed and determined 2767
under sections 38, 51, and 52 of the Internal Revenue Code not 2768
been in effect. 2769

(11) Deduct net interest income on obligations of the United 2770
States and its territories and possessions or of any authority, 2771
commission, or instrumentality of the United States to the extent 2772
the laws of the United States prohibit inclusion of the net 2773
interest for purposes of determining the value of the taxpayer's 2774
issued and outstanding shares of stock under division (B) of 2775
section 5733.05 of the Revised Code. As used in division (I)(11) 2776
of this section, "net interest" means interest net of any expenses 2777
taken on the federal income tax return that would not have been 2778
allowed under section 265 of the Internal Revenue Code if the 2779

interest were exempt from federal income tax. 2780

(12)(a) Except as set forth in division (I)(12)(d) of this 2781
section, to the extent not included in computing the taxpayer's 2782
federal taxable income before operating loss deduction and special 2783
deductions, add gains and deduct losses from direct or indirect 2784
sales, exchanges, or other dispositions, made by a related entity 2785
who is not a taxpayer, of the taxpayer's indirect, beneficial, or 2786
constructive investment in the stock or debt of another entity, 2787
unless the gain or loss has been included in computing the federal 2788
taxable income before operating loss deduction and special 2789
deductions of another taxpayer with a more closely related 2790
investment in the stock or debt of the other entity. The amount of 2791
gain added or loss deducted shall not exceed the product obtained 2792
by multiplying such gain or loss by the taxpayer's proportionate 2793
share, directly, indirectly, beneficially, or constructively, of 2794
the outstanding stock of the related entity immediately prior to 2795
the direct or indirect sale, exchange, or other disposition. 2796
2797

(b) Except as set forth in division (I)(12)(e) of this 2798
section, to the extent not included in computing the taxpayer's 2799
federal taxable income before operating loss deduction and special 2800
deductions, add gains and deduct losses from direct or indirect 2801
sales, exchanges, or other dispositions made by a related entity 2802
who is not a taxpayer, of intangible property other than stock, 2803
securities, and debt, if such property was owned, or used in whole 2804
or in part, at any time prior to or at the time of the sale, 2805
exchange, or disposition by either the taxpayer or by a related 2806
entity that was a taxpayer at any time during the related entity's 2807
ownership or use of such property, unless the gain or loss has 2808
been included in computing the federal taxable income before 2809
operating loss deduction and special deductions of another 2810
taxpayer with a more closely related ownership or use of such 2811

intangible property. The amount of gain added or loss deducted 2812
shall not exceed the product obtained by multiplying such gain or 2813
loss by the taxpayer's proportionate share, directly, indirectly, 2814
beneficially, or constructively, of the outstanding stock of the 2815
related entity immediately prior to the direct or indirect sale, 2816
exchange, or other disposition. 2817

(c) As used in division (I)(12) of this section, "related 2818
entity" means those entities described in divisions (I)(12)(c)(i) 2819
to (iii) of this section: 2820

(i) An individual stockholder, or a member of the 2821
stockholder's family enumerated in section 318 of the Internal 2822
Revenue Code, if the stockholder and the members of the 2823
stockholder's family own, directly, indirectly, beneficially, or 2824
constructively, in the aggregate, at least fifty per cent of the 2825
value of the taxpayer's outstanding stock; 2826

(ii) A stockholder, or a stockholder's partnership, estate, 2827
trust, or corporation, if the stockholder and the stockholder's 2828
partnerships, estates, trusts, and corporations own directly, 2829
indirectly, beneficially, or constructively, in the aggregate, at 2830
least fifty per cent of the value of the taxpayer's outstanding 2831
stock; 2832

(iii) A corporation, or a party related to the corporation in 2833
a manner that would require an attribution of stock from the 2834
corporation to the party or from the party to the corporation 2835
under division (I)(12)(c)(iv) of this section, if the taxpayer 2836
owns, directly, indirectly, beneficially, or constructively, at 2837
least fifty per cent of the value of the corporation's outstanding 2838
stock. 2839

(iv) The attribution rules of section 318 of the Internal 2840
Revenue Code apply for purposes of determining whether the 2841
ownership requirements in divisions (I)(12)(c)(i) to (iii) of this 2842

section have been met.	2843
(d) For purposes of the adjustments required by division (I)(12)(a) of this section, the term "investment in the stock or debt of another entity" means only those investments where the taxpayer and the taxpayer's related entities directly, indirectly, beneficially, or constructively own, in the aggregate, at any time during the twenty-four month period commencing one year prior to the direct or indirect sale, exchange, or other disposition of such investment at least fifty per cent or more of the value of either the outstanding stock or such debt of such other entity.	2844 2845 2846 2847 2848 2849 2850 2851 2852
(e) For purposes of the adjustments required by division (I)(12)(b) of this section, the term "related entity" excludes all of the following:	2853 2854 2855
(i) Foreign corporations as defined in section 7701 of the Internal Revenue Code;	2856 2857
(ii) Foreign partnerships as defined in section 7701 of the Internal Revenue Code;	2858 2859
(iii) Corporations, partnerships, estates, and trusts created or organized in or under the laws of the Commonwealth of Puerto Rico or any possession of the United States;	2860 2861 2862
(iv) Foreign estates and foreign trusts as defined in section 7701 of the Internal Revenue Code.	2863 2864
The exclusions described in divisions (I)(12)(e)(i) to (iv) of this section do not apply if the corporation, partnership, estate, or trust is described in any one of divisions <u>division</u> (C)(1) to (5) of section 5733.042 of the Revised Code.	2865 2866 2867 2868
(f) Nothing in division (I)(12) of this section shall require or permit a taxpayer to add any gains or deduct any losses described in divisions (I)(12)(f)(i) and (ii) of this section:	2869 2870 2871
(i) Gains or losses recognized for federal income tax	2872

purposes by an individual, estate, or trust without regard to the	2873
attribution rules described in division (I)(12)(c) of this	2874
section;	2875
(ii) A related entity's gains or losses described in division	2876
(I)(12)(b) if the taxpayer's ownership of or use of such	2877
intangible property was limited to a period not exceeding nine	2878
months and was attributable to a transaction or a series of	2879
transactions executed in accordance with the election or elections	2880
made by the taxpayer or a related entity pursuant to section 338	2881
of the Internal Revenue Code.	2882
(13) Any adjustment required by section 5733.042 of the	2883
Revised Code.	2884
(14) Add any amount claimed as a credit under section	2885
5733.0611 of the Revised Code to the extent that such amount	2886
satisfies either of the following:	2887
(a) It was deducted or excluded from the computation of the	2888
corporation's taxable income before operating loss deduction and	2889
special deductions as required to be reported for the	2890
corporation's taxable year under the Internal Revenue Code;	2891
(b) It resulted in a reduction of the corporation's taxable	2892
income before operating loss deduction and special deductions as	2893
required to be reported for any of the corporation's taxable years	2894
under the Internal Revenue Code.	2895
(15) Deduct the amount contributed by the taxpayer to an	2896
individual development account program established by a county	2897
department of job and family services pursuant to sections 329.11	2898
to 329.14 of the Revised Code for the purpose of matching funds	2899
deposited by program participants. On request of the tax	2900
commissioner, the taxpayer shall provide any information that, in	2901
the tax commissioner's opinion, is necessary to establish the	2902
amount deducted under division (I)(15) of this section.	2903

(16) Any adjustment required by section 5733.0510 of the Revised Code. 2904
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(J) Any term used in this chapter has the same meaning as when used in comparable context in the laws of the United States relating to federal income taxes unless a different meaning is clearly required. Any reference in this chapter to the Internal Revenue Code includes other laws of the United States relating to federal income taxes. 2906
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(K) "Financial institution" has the meaning given by section 5725.01 of the Revised Code but does not include a production credit association as described in 85 Stat. 597, 12 U.S.C.A. 2091. 2912
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(L)(1) A "qualifying holding company" is any corporation satisfying all of the following requirements: 2915
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(a) Subject to divisions (L)(2) and (3) of this section, the net book value of the corporation's intangible assets is greater than or equal to ninety per cent of the net book value of all of its assets and at least fifty per cent of the net book value of all of its assets represents direct or indirect investments in the equity of, loans and advances to, and accounts receivable due from related members; 2917
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(b) At least ninety per cent of the corporation's gross income for the taxable year is attributable to the following: 2924
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(i) The maintenance, management, ownership, acquisition, use, and disposition of its intangible property, its aircraft the use of which is not subject to regulation under 14 C.F.R. part 121 or part 135, and any real property described in division (L)(2)(c) of this section; 2926
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(ii) The collection and distribution of income from such property. 2931
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(c) The corporation is not a financial institution on the 2933

last day of the taxable year ending prior to the first day of the
tax year; 2934
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(d) The corporation's related members make a good faith and 2936
reasonable effort to make timely and fully the adjustments 2937
required by division ~~(C)(2)~~(D)(1) of section 5733.05 of the 2938
Revised Code and to pay timely and fully all uncontested taxes, 2939
interest, penalties, and other fees and charges imposed under this 2940
chapter; 2941

(e) Subject to division (L)(4) of this section, the 2942
corporation elects to be treated as a qualifying holding company 2943
for the tax year. 2944

A corporation otherwise satisfying divisions (L)(1)(a) to (e) 2945
of this section that does not elect to be a qualifying holding 2946
company is not a qualifying holding company for the purposes of 2947
this chapter. 2948

(2)(a)(i) For purposes of making the ninety per cent 2949
computation under division (L)(1)(a) of this section, the net book 2950
value of the corporation's assets shall not include the net book 2951
value of aircraft or real property described in division 2952
(L)(1)(b)(i) of this section. 2953

(ii) For purposes of making the fifty per cent computation 2954
under division (L)(1)(a) of this section, the net book value of 2955
assets shall include the net book value of aircraft or real 2956
property described in division (L)(1)(b)(i) of this section. 2957

(b)(i) As used in division (L) of this section, "intangible 2958
asset" includes, but is not limited to, the corporation's direct 2959
interest in each pass-through entity only if at all times during 2960
the corporation's taxable year ending prior to the first day of 2961
the tax year the corporation's and the corporation's related 2962
members' combined direct and indirect interests in the capital or 2963
profits of such pass-through entity do not exceed fifty per cent. 2964

If the corporation's interest in the pass-through entity is an intangible asset for that taxable year, then the distributive share of any income from the pass-through entity shall be income from an intangible asset for that taxable year. 2965
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(ii) If a corporation's and the corporation's related members' combined direct and indirect interests in the capital or profits of a pass-through entity exceed fifty per cent at any time during the corporation's taxable year ending prior to the first day of the tax year, "intangible asset" does not include the corporation's direct interest in the pass-through entity, and the corporation shall include in its assets its proportionate share of the assets of any such pass-through entity and shall include in its gross income its distributive share of the gross income of such pass-through entity in the same form as was earned by the pass-through entity. 2969
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(iii) A pass-through entity's direct or indirect proportionate share of any other pass-through entity's assets shall be included for the purpose of computing the corporation's proportionate share of the pass-through entity's assets under division (L)(2)(b)(ii) of this section, and such pass-through entity's distributive share of any other pass-through entity's gross income shall be included for purposes of computing the corporation's distributive share of the pass-through entity's gross income under division (L)(2)(b)(ii) of this section. 2980
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(c) For the purposes of divisions (L)(1)(b)(i), (1)(b)(ii), (2)(a)(i), and (2)(a)(ii) of this section, real property is described in division (L)(2)(c) of this section only if all of the following conditions are present at all times during the taxable year ending prior to the first day of the tax year: 2989
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(i) The real property serves as the headquarters of the corporation's trade or business, or is the place from which the corporation's trade or business is principally managed or 2994
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directed;	2997
(ii) Not more than ten per cent of the value of the real property and not more than ten per cent of the square footage of the building or buildings that are part of the real property is used, made available, or occupied for the purpose of providing, acquiring, transferring, selling, or disposing of tangible property or services in the normal course of business to persons other than related members, the corporation's employees and their families, and such related members' employees and their families.	2998 2999 3000 3001 3002 3003 3004 3005
(d) As used in division (L) of this section, "related member" has the same meaning as in division (A)(6) of section 5733.042 of the Revised Code without regard to division (B) of that section.	3006 3007 3008 3009
(3) The percentages described in division (L)(1)(a) of this section shall be equal to the quarterly average of those percentages as calculated during the corporation's taxable year ending prior to the first day of the tax year.	3010 3011 3012 3013
(4) With respect to the election described in division (L)(1)(e) of this section:	3014 3015
(a) The election need not accompany a timely filed report;	3016
(b) The election need not accompany the report; rather, the election may accompany a subsequently filed but timely application for refund and timely amended report, or a subsequently filed but timely petition for reassessment;	3017 3018 3019 3020
(c) The election is not irrevocable;	3021
(d) The election applies only to the tax year specified by the corporation;	3022 3023
(e) The corporation's related members comply with division (L)(1)(d) of this section.	3024 3025
Nothing in division (L)(4) of this section shall be construed	3026

to extend any statute of limitations set forth in this chapter. 3027

(M) "Qualifying controlled group" means two or more 3028
corporations that satisfy the ownership and control requirements 3029
of division (A) of section 5733.052 of the Revised Code. 3030

(N) "Limited liability company" means any limited liability 3031
company formed under Chapter 1705. of the Revised Code or under 3032
the laws of any other state. 3033

(O) "Pass-through entity" means a corporation that has made 3034
an election under subchapter S of Chapter 1 of Subtitle A of the 3035
Internal Revenue Code for its taxable year under that code, or a 3036
partnership, limited liability company, or any other person, other 3037
than an individual, trust, or estate, if the partnership, limited 3038
liability company, or other person is not classified for federal 3039
income tax purposes as an association taxed as a corporation. 3040

(P) "Electric company" and "combined company" have the same 3041
meanings as in section 5727.01 of the Revised Code. 3042

Sec. 5733.042. (A) As used in this section: 3043

(1) "Affiliated group" has the same meaning as in section 3044
1504 of the Internal Revenue Code. 3045

(2) "Asset value" means the adjusted basis of assets as 3046
determined in accordance with Subchapter O of the Internal Revenue 3047
Code and the Treasury Regulations thereunder. 3048

(3) "Intangible expenses and costs" include expenses, losses, 3049
and costs for, related to, or in connection directly or indirectly 3050
with the direct or indirect acquisition of, the direct or indirect 3051
use of, the direct or indirect maintenance or management of, the 3052
direct or indirect ownership of, the direct or indirect sale of, 3053
the direct or indirect exchange of, or any other direct or 3054
indirect disposition of intangible property to the extent such 3055
amounts are allowed as deductions or costs in determining taxable 3056

income before operating loss deduction and special deductions for 3057
the taxable year under the Internal Revenue Code. Such expenses 3058
and costs include, but are not limited to, losses related to or 3059
incurred in connection directly or indirectly with factoring 3060
transactions, losses related to or incurred in connection directly 3061
or indirectly with discounting transactions, royalty, patent, 3062
technical, and copyright fees, licensing fees, and other similar 3063
expenses and costs. 3064

(4) "Interest expenses and costs" include but are not limited 3065
to amounts directly or indirectly allowed as deductions under 3066
section 163 of the Internal Revenue Code for purposes of 3067
determining taxable income under the Internal Revenue Code. 3068

(5) "Member" has the same meaning as in U.S. Treasury 3069
Regulation section 1.1502-1. 3070

(6) "Related member" means a person that, with respect to the 3071
taxpayer during all or any portion of the taxable year, is a 3072
"related entity" as defined in division (I)(12)(c) of section 3073
5733.04 of the Revised Code, is a component member as defined in 3074
section 1563(b) of the Internal Revenue Code, or is a person to or 3075
from whom there is attribution of stock ownership in accordance 3076
with section 1563(e) of the Internal Revenue Code except, for 3077
purposes of determining whether a person is a related member under 3078
this division, "twenty per cent" shall be substituted for "5 per 3079
cent" wherever "5 per cent" appears in section 1563(e) of the 3080
Internal Revenue Code. 3081

(B) This section applies to all corporations for tax years 3082
1999 and thereafter. For tax years prior to 1999, this section 3083
applies only to a corporation that has, or is a member of an 3084
affiliated group that has, or is a member of an affiliated group 3085
with another member that has, one or more of the following: 3086

(1) Gross sales, including sales to other members of the 3087

affiliated group, during the taxable year of at least fifty million dollars; 3088
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(2) Total assets whose asset value at any time during the taxable year is at least twenty-five million dollars; 3090
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(3) Taxable income before operating loss deduction and special deductions during the taxable year of at least five hundred thousand dollars. 3092
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(C) For purposes of computing its net income under division (I) of section 5733.04 of the Revised Code, the corporation shall add interest expenses and costs and intangible expenses and costs directly or indirectly paid, accrued, or incurred to, or in connection directly or indirectly with one or more direct or indirect transactions with, ~~one or more of the following any~~ related members; 3095
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~~(1) Any related member whose activities, in any one state, are primarily limited to the maintenance and management of intangible investments or of the intangible investments of corporations, business trusts, or other entities registered as investment companies under the "Investment Company Act of 1940," 15 U.S.C. 80a-1 et seq., as amended, and the collection and distribution of the income from such investments or from tangible property physically located outside such state. For purposes of division (C)(1) of this section, "intangible investments" includes, without limitation, investments in stocks, bonds, notes, and other debt obligations, including debt obligations of related members, interests in partnerships, patents, patent applications, trademarks, trade names, and similar types of intangible assets.~~ 3102
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~~(2) Any related member that is a personal holding company as defined in section 542 of the Internal Revenue Code without regard to the stock ownership requirements set forth in section 542(a)(2) of the Internal Revenue Code;~~ 3115
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~~(3) Any related member that is not a corporation and is 3119
directly, indirectly, constructively, or beneficially owned in 3120
whole or in part by a personal holding company as defined in 3121
section 542 of the Internal Revenue Code without regard to the 3122
stock ownership requirements set forth in section 542(a)(2) of the 3123
Internal Revenue Code; 3124~~

~~(4) Any related member that is a foreign personal holding 3125
company as defined in section 552 of the Internal Revenue Code; 3126~~

~~(5) Any related member that is not a corporation and is 3127
directly, indirectly, constructively, or beneficially owned in 3128
whole or in part by a foreign personal holding company as defined 3129
in section 552 of the Internal Revenue Code; 3130~~

~~(6) Any related member if that related member or another 3131
related member directly or indirectly paid, accrued, or incurred 3132
to, or in connection directly or indirectly with one or more 3133
direct or indirect transactions with, another related member any 3134
interest expenses and costs or intangible expenses and costs in an 3135
amount less than, equal to, or greater than such amounts received 3136
from the corporation. Division (C)(6) of this section applies only 3137
if, within a one-hundred-twenty-month period commencing three 3138
years prior to the beginning of the tax year, a related member 3139
directly or indirectly paid, accrued, or incurred such amounts or 3140
losses with respect to one or more direct or indirect transactions 3141
with an entity described in divisions (C)(1) to (5) of this 3142
section. A rebuttable presumption exists that a related member did 3143
so pay, accrue, or incur such amounts or losses with respect to 3144
one or more direct or indirect transactions with an entity 3145
described in divisions (C)(1) to (5) of this section. A 3146
corporation can rebut this presumption only with a preponderance 3147
of the evidence to the contrary. 3148~~

~~(7) Any related member that, with respect to indebtedness 3149
directly or indirectly owed by the corporation to the related 3150~~

member, directly or indirectly charged or imposed on the 3151
corporation an excess interest rate. If the related member has 3152
charged or imposed on the corporation an excess interest rate, the 3153
adjustment required by division (C)(7) of this section with 3154
respect to such interest expenses and costs directly or indirectly 3155
paid, accrued, or incurred to the related member in connection 3156
with such indebtedness does not include so much of such interest 3157
expenses and costs that the corporation would have directly or 3158
indirectly paid, accrued, or incurred if the related member had 3159
charged or imposed the highest possible interest rate that would 3160
not have been an excess interest rate. For purposes of division 3161
(C)(7) of this section, an excess interest rate is an annual rate 3162
that exceeds by more than three per cent the greater of the rate 3163
per annum prescribed by section 5703.47 of the Revised Code in 3164
effect at the time of the origination of the indebtedness, or the 3165
rate per annum prescribed by section 5703.47 of the Revised Code 3166
in effect at the time the corporation paid, accrued, or incurred 3167
the interest expense or cost to the related member. 3168

(D)(1) In making the adjustment required by division (C) of 3169
this section, the corporation shall make the adjustment required 3170
by section 5733.057 of the Revised Code. The adjustments required 3171
by division (C) of this section are not required if either of the 3172
following applies: 3173

(a) The corporation establishes by clear and convincing 3174
evidence that the adjustments are unreasonable. 3175

(b) The corporation and the tax commissioner agree in writing 3176
to the application or use of alternative adjustments and 3177
computations to more properly reflect the base required to be 3178
determined in accordance with division (B) of section 5733.05 of 3179
the Revised Code. Nothing in division (D)(1)(b) of this section 3180
shall be construed to limit or negate the tax commissioner's 3181
authority to otherwise enter into agreements and compromises 3182

otherwise allowed by law.	3183
(2) The adjustments required by divisions <u>division</u> (C)(1) to	3184
(5) of this section do not apply to such portion of interest	3185
expenses and costs and intangible expenses and costs that the	3186
corporation can establish by the preponderance of the evidence	3187
meets both of the following:	3188
(a) The related member during the same taxable year directly	3189
or indirectly paid, accrued, or incurred such portion to a person	3190
who is not a related member.	3191
(b) The transaction giving rise to the interest expenses and	3192
costs or the intangible expenses and costs between the corporation	3193
and the related member did not have as a principal purpose the	3194
avoidance of any portion of the tax due under this chapter.	3195
(3) The adjustments required by division (C)(6) of this	3196
section do not apply to such portion of interest expenses and	3197
costs and intangible expenses and costs that the corporation can	3198
establish by the preponderance of the evidence meets both of the	3199
following:	3200
(a) The entity described in any of divisions (C)(1) to (6) of	3201
this section to whom the related member directly or indirectly	3202
paid, accrued, or incurred such portion, in turn during the same	3203
taxable year directly or indirectly paid, accrued or incurred such	3204
portion to a person who is not a related member, and	3205
(b) The transaction or transactions giving rise to the	3206
interest expenses and costs or the intangible expenses and costs	3207
between the corporation, the related member, and the entity	3208
described in any of divisions (C)(1) to (5) did not have as a	3209
principal purpose the avoidance of any portion of the tax due	3210
under this chapter.	3211
(4)(2) The adjustments required by division (C) of this	3212
section apply except to the extent that the increased tax, if any,	3213

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attributable to such adjustments would have been avoided if both 3214
the corporation and the related member had been eligible to ~~make~~ 3215
request and had timely ~~made the election requested, and the tax~~ 3216
commissioner had approved the request, to combine in accordance 3217
with division ~~(B)~~(A) of section 5733.052 of the Revised Code. 3218
Nothing in this division shall be construed to require either that 3219
the corporation actually make the request or actually file a 3220
combined report with the related member or that the commissioner 3221
actually approved the request. 3222

(E) Except as otherwise provided in division (F) of this 3223
section, if, on the day that is one year after the day the 3224
corporation files its report, the corporation has not made the 3225
adjustment required by this section or has not fully paid the tax 3226
and interest, if any, imposed by this chapter and attributable to 3227
such adjustment, the corporation is subject to a penalty equal to 3228
twice the interest charged under division (A) of section 5733.26 3229
of the Revised Code for the delinquent payment of such tax and 3230
interest. For the purpose of the computation of the penalty 3231
imposed by this division, such penalty shall be deemed to be part 3232
of the tax due on the dates prescribed by this chapter without 3233
regard to the one-year period set forth in this division. The 3234
penalty imposed by this division is not in lieu of but is in 3235
addition to all other penalties, other similar charges, and 3236
interest imposed by this chapter. The tax commissioner may waive, 3237
abate, modify, or refund, with interest, all or any portion of the 3238
penalty imposed by this division only if the corporation 3239
establishes beyond a reasonable doubt that both the failure to 3240
fully comply with this section and the failure to fully pay such 3241
tax and interest within one year after the date the corporation 3242
files its report were not in any part attributable to the 3243
avoidance of any portion of the tax imposed by section 5733.06 of 3244
the Revised Code. 3245

(F)(1) For purposes of division (F) of this division section, 3246
"tax ~~differential~~ difference" means the difference between the tax 3247
that is imposed by section 5733.06 of the Revised Code and that is 3248
attributable to the adjustment required by this section and the 3249
amount paid that is so attributable, prior to the day that is one 3250
year after the day the corporation files its report. 3251

3252

(2) The penalty imposed by division (E) of this section does 3253
not apply if the tax ~~differential~~ difference meets both of the 3254
following requirements: 3255

(a) The tax ~~differential~~ difference is less than ten per cent 3256
of the tax imposed by section 5733.06 of the Revised Code; and 3257

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(b) The tax difference is less than fifty thousand dollars. 3259

(3) Nothing in division (F) of this section shall be 3260
construed to waive, abate, or modify any other penalties, other 3261
similar charges, or interest imposed by other sections of this 3262
chapter. 3263

(G) Nothing in this section shall require a corporation to 3264
add to its net income more than once any amount of interest 3265
expenses and costs or intangible expenses and costs that the 3266
corporation pays, accrues, or incurs to a related member described 3267
in division (C) of this section. 3268

Sec. 5733.043. (A) For purposes of this section, the 3269
"suspended tax benefit portion of the net operating loss 3270
deduction" is the sum of the amounts described in divisions (A)(1) 3271
to (3) of this section. Division (A)(1) of this section applies 3272
only to corporations described in division (I)(1)(d)(i) of section 3273
5733.04 of the Revised Code. Division (A)(3) of this section 3274
applies only to corporations described in division (I)(1)(d)(iii) 3275

of section 5733.04 of the Revised Code. 3276

(1) The suspended benefit portion of the net operating loss deduction attributable to tax year 2002 is the following: 3277

(a) If the tax computed under division (C) of section 5733.06 of the Revised Code is greater than the tax computed under divisions (A) and (B) of section 5733.06 of the Revised Code without the application of division (I)(1)(d) of section 5733.04 of the Revised Code, the suspended tax benefit portion is zero. 3278

(b) If the tax computed under divisions (A) and (B) of section 5733.06 of the Revised Code after application of division (I)(1)(d) of section 5733.04 of the Revised Code is greater than the tax computed under division (C) of section 5733.06 of the Revised Code, and if the tax computed under division (C) of section 5733.06 of the Revised Code is greater than the tax computed under divisions (A) and (B) of section 5733.06 of the Revised Code without the application of division (I)(1)(d) of section 5733.04 of the Revised Code, the suspended tax benefit portion is the amount that, if subtracted from taxable income computed after application of division (I)(1)(d) of section 5733.04 of the Revised Code, would result in a reduced taxable income whose tax computed under divisions (A) and (B) of section 5733.06 of the Revised Code would equal the tax computed under division (C) of section 5733.06 of the Revised Code. 3279

(c) If the tax computed under divisions (A) and (B) of section 5733.06 of the Revised Code without the application of division (I)(1)(d) of section 5733.04 of the Revised Code is greater than the tax computed under division (C) of section 5733.06 of the Revised Code, the suspended tax benefit portion is the difference between taxable income computed after application of division (I)(1)(d) of section 5733.04 of the Revised Code and taxable income computed without the application of division 3299

(I)(1)(d) of section 5733.04 of the Revised Code. 3307

(2) The suspended benefit portion of the net operating loss deduction attributable to tax year 2003 is the following: 3308
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(a) If the tax computed under division (C) of section 5733.06 of the Revised Code is greater than the tax computed under divisions (A) and (B) of section 5733.06 of the Revised Code without the application of division (I)(1)(d) of section 5733.04 of the Revised Code, the suspended tax benefit portion is zero. 3310
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(b) If the tax computed under divisions (A) and (B) of section 5733.06 of the Revised Code after application of division (I)(1)(d) of section 5733.04 of the Revised Code is greater than the tax computed under division (C) of section 5733.06 of the Revised Code, and if the tax computed under division (C) of section 5733.06 of the Revised Code is greater than the tax computed under divisions (A) and (B) of section 5733.06 of the Revised Code without the application of division (I)(1)(d) of section 5733.04 of the Revised Code, the suspended tax benefit portion is the amount that, if subtracted from taxable income computed after application of division (I)(1)(d) of section 5733.04 of the Revised Code, would result in a reduced taxable income whose tax computed under divisions (A) and (B) of section 5733.06 of the Revised Code would equal the tax computed under division (C) of section 5733.06 of the Revised Code. 3315
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(c) If the tax computed under divisions (A) and (B) of section 5733.06 of the Revised Code without the application of division (I)(1)(d) of section 5733.04 of the Revised Code is greater than the tax computed under division (C) of section 5733.06 of the Revised Code, the suspended tax benefit portion is the difference between taxable income computed after application of division (I)(1)(d) of section 5733.04 of the Revised Code and taxable income computed without the application of division (I)(1)(d) of section 5733.04 of the Revised Code. 3330
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(3) The suspended benefit portion of the net operating loss deduction attributable to tax year 2004 is the following: 3339
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(a) If the tax computed under division (C) of section 5733.06 of the Revised Code is greater than the tax computed under divisions (A) and (B) of section 5733.06 of the Revised Code without the application of division (I)(1)(d) of section 5733.04 of the Revised Code, the suspended tax benefit portion is zero. 3341
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(b) If the tax computed under divisions (A) and (B) of section 5733.06 of the Revised Code after application of division (I)(1)(d) of section 5733.04 of the Revised Code is greater than the tax computed under division (C) of section 5733.06 of the Revised Code, and if the tax computed under division (C) of section 5733.06 of the Revised Code is greater than the tax computed under divisions (A) and (B) of section 5733.06 of the Revised Code without the application of division (I)(1)(d) of section 5733.04 of the Revised Code, the suspended tax benefit portion is the amount that, if subtracted from taxable income computed after application of division (I)(1)(d) of section 5733.04 of the Revised Code, would result in a reduced taxable income whose tax computed under divisions (A) and (B) of section 5733.06 of the Revised Code would equal the tax computed under division (C) of section 5733.06 of the Revised Code. 3346
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(c) If the tax computed under divisions (A) and (B) of section 5733.06 of the Revised Code without the application of division (I)(1)(d) of section 5733.04 of the Revised Code is greater than the tax computed under division (C) of section 5733.06 of the Revised Code, the suspended tax benefit portion is the difference between taxable income computed after application of division (I)(1)(d) of section 5733.04 of the Revised Code and taxable income computed without the application of division (I)(1)(d) of section 5733.04 of the Revised Code. 3361
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(B) Beginning with tax year 2004, a corporation described in 3370

division (I)(1)(d)(i) of section 5733.04 of the Revised Code is 3371
entitled to a deduction from Ohio taxable income for the suspended 3372
tax benefit portion of the net operating loss deduction. The 3373
deduction allowed by this section shall not be available to such 3374
corporations for tax year 2019 and thereafter. 3375

(C) Beginning with tax year 2005, a corporation described in 3376
division (I)(1)(d)(ii) or (I)(1)(d)(iii) of section 5733.04 of the 3377
Revised Code is entitled to a deduction from Ohio taxable income 3378
for the suspended tax benefit portion of the net operating loss 3379
deduction. The deduction allowed by this section shall not be 3380
available to such corporations for tax year 2020 and thereafter. 3381

(D)(1) The amount of the deduction for the tax year shall be 3382
the amount, if any, that is necessary, after application of all 3383
other deductions allowed to the corporation for the tax year, to 3384
reduce Ohio taxable income to zero. 3385

(2) Any remaining unused amount of the suspended tax benefit 3386
portion of the net operating loss deduction shall be carried 3387
forward to the next ensuing tax year and deducted in accordance 3388
with the procedure set forth in division (D)(1) of this section. 3389
Any such amount deducted in an ensuing tax year shall reduce the 3390
amount, if any, carried forward to the next ensuing tax year. 3391

(3) All unused amounts of the suspended tax benefit portion 3392
of the net operating loss deduction allowed under this chapter 3393
shall be claimed in the order in which they arose so that any 3394
portion arising in the first of two consecutive tax years shall be 3395
claimed prior to claiming any portion arising in the second of two 3396
consecutive tax years. 3397

(E)(1) For purposes of this section, "Ohio taxable income" 3398
means the value of the corporation's issued and outstanding shares 3399
of stock as determined under division (B) of section 5733.05 of 3400
the Revised Code without regard to the deductions provided by 3401

<u>divisions (B) and (C) of this section.</u>	3402
<u>(2) If a corporation is entitled to a deduction under</u>	3403
<u>division (B) or (C) of this section for a tax year, then for</u>	3404
<u>purposes of sections 5733.06, 5733.065, and 5733.066 of the</u>	3405
<u>Revised Code for that tax year, the "value of the taxpayer's</u>	3406
<u>issued and outstanding shares of stock as determined under</u>	3407
<u>division (B) of section 5733.05 of the Revised Code" means such</u>	3408
<u>value reduced by the deduction provided by this section.</u>	3409
<u>(F) Nothing in this section shall be construed to allow any</u>	3410
<u>amount to be deducted more than once.</u>	3411
Sec. 5733.055. (A) As used in this section:	3412
(1) "Ceiling amount" means the excess of the amount described	3413
in division (A)(1)(a) of this section over the amount described in	3414
division (A)(1)(b) of this section:	3415
(a) The amount of income allocated and apportioned to this	3416
state in accordance with this chapter but without regard to and	3417
without application of the adjustments required by this section;	3418
(b) The amount of income allocated and apportioned to this	3419
state in accordance with this chapter but without regard to and	3420
without application of the adjustments required by both this	3421
section and division (I)(13) of section 5733.04 of the Revised	3422
Code.	3423
(2) "Income adjustment amount" means the sum of the amounts	3424
described in divisions (A)(2)(a) and (b) of this section:	3425
(a) The related member's net interest income actually	3426
allocated and apportioned to other states that impose a tax on or	3427
measured by income, in accordance with the other states'	3428
allocation and apportionment rules;	3429
(b) The related member's net intangible income actually	3430

allocated and apportioned to other states that impose a tax on or 3431
measured by income, in accordance with the other states' 3432
allocation and apportionment rules. 3433

For purposes of division (A)(2) of this section, "other 3434
states" does not include those states under whose laws the 3435
taxpayer files or could have elected to file with the related 3436
member, or the related member files or could have elected to file 3437
with another related member, a combined income tax report or 3438
return, a consolidated income tax report or return, or any other 3439
report or return where such report or return is due because of the 3440
imposition of a tax measured on or by income and such report or 3441
return results in the elimination of the tax effects from 3442
transactions directly or indirectly between either the taxpayer 3443
and the related member or between the related member and another 3444
corporation if such other corporation, during a 3445
one-hundred-twenty-month period commencing three years prior to 3446
the beginning of the tax year, directly or indirectly paid, 3447
accrued, or incurred intangible expenses and costs or interest 3448
expenses and costs to an entity described in ~~divisions~~ division 3449
(C)~~(1) to (5)~~ of section 5733.042 of the Revised Code. 3450

(3) "Intangible expenses and costs" has the same meaning as 3451
in division (A)(3) of section 5733.042 of the Revised Code. 3452

(4) "Interest expenses and costs" has the same meaning as in 3453
division (A)(4) of section 5733.042 of the Revised Code. 3454

(5) "Intangible income and revenue" are those amounts earned 3455
or received by a related member from a taxpayer for the taxpayer's 3456
use of intangible property. Such amounts include, but are not 3457
limited to, royalty, patent, technical, and copyright fees, 3458
licensing fees, and other similar income and revenue. 3459

(6) "Interest income and revenue" are those amounts earned or 3460
received by a related member from a taxpayer to the extent such 3461

amounts are allowed as deductions under section 163 of the Internal Revenue Code for purposes of determining the taxpayer's taxable income under the Internal Revenue Code.

(7) "Net intangible income" means intangible income and revenue reduced by intangible expenses and costs paid or accrued directly or indirectly to a related member described in ~~any of divisions~~ division (C)~~(1) to (7)~~ of section 5747.042 of the Revised Code.

(8) "Net interest income" means interest income and revenue reduced by interest expenses and costs paid or accrued directly or indirectly to a related member described in ~~any of divisions~~ division (C)~~(1) to (7)~~ of section 5747.042 of the Revised Code.

(B) Except as set forth in division (C) of this section, a deduction from the corporation's net income allocated and apportioned to this state shall be allowed in an amount equal to the income adjustment amount described in division (A)(2) of this section. However, in no case shall the deduction be greater than the ceiling amount described in division (A)(1) of this section.

(C) The deduction provided by division (B) of this section is available to the taxpayer only if the taxpayer establishes with clear and convincing evidence that the intangible expenses and costs and the interest expenses and costs paid, accrued, or incurred by the corporation to a related member did not have as a principal purpose the avoidance of any portion of the tax imposed by section 5733.06 of the Revised Code.

Sec. 5739.01. As used in this chapter:

(A) "Person" includes individuals, receivers, assignees, trustees in bankruptcy, estates, firms, partnerships, associations, joint-stock companies, joint ventures, clubs, societies, corporations, the state and its political subdivisions,

and combinations of individuals of any form.	3492
(B) "Sale" and "selling" include all of the following	3493
transactions for a consideration in any manner, whether absolutely	3494
or conditionally, whether for a price or <u>for lease or rental</u> , in	3495
money or by exchange, and by any means whatsoever:	3496
(1) All transactions by which title or possession, or both,	3497
of tangible personal property, is or is to be transferred, or a	3498
license to use or consume tangible personal property is or is to	3499
be granted;	3500
(2) All transactions by which lodging by a hotel is or is to	3501
be furnished to transient guests;	3502
(3) All transactions by which:	3503
(a) An item of tangible personal property is or is to be	3504
repaired, except property, the purchase of which would be exempt	3505
from the tax imposed by section 5739.02 of the Revised Code;	3506
(b) An item of tangible personal property is or is to be	3507
installed, except property, the purchase of which would be exempt	3508
from the tax imposed by section 5739.02 of the Revised Code or	3509
property that is or is to be incorporated into and will become a	3510
part of a production, transmission, transportation, or	3511
distribution system for the delivery of a public utility service;	3512
(c) The service of washing, cleaning, waxing, polishing, or	3513
painting a motor vehicle is or is to be furnished;	3514
(d) Industrial laundry cleaning services are or are to be	3515
provided;	3516
(e) Automatic data processing, computer services, or	3517
electronic information services are or are to be provided for use	3518
in business when the true object of the transaction is the receipt	3519
by the consumer of automatic data processing, computer services,	3520
or electronic information services rather than the receipt of	3521

personal or professional services to which automatic data 3522
processing, computer services, or electronic information services 3523
are incidental or supplemental. Notwithstanding any other 3524
provision of this chapter, such transactions that occur between 3525
members of an affiliated group are not sales. ~~An affiliated group~~ 3526
~~means two or more persons related in such a way that one person~~ 3527
~~owns or controls the business operation of another member of the~~ 3528
~~group. In the case of corporations with stock, one corporation~~ 3529
~~owns or controls another if it owns more than fifty per cent of~~ 3530
~~the other corporation's common stock with voting rights.~~ 3531

(f) Telecommunications service is provided that originates or 3532
terminates in this state and is charged in the records of the 3533
telecommunications service vendor to the consumer's telephone 3534
number or account in this state, or that both originates and 3535
terminates in this state; but does not include transactions by 3536
which telecommunications service is paid for by using a prepaid 3537
authorization number or prepaid telephone calling card, or by 3538
which local telecommunications service is obtained from a 3539
coin-operated telephone and paid for by using coin; 3540

(g) Landscaping and lawn care service is or is to be 3541
provided; 3542

(h) Private investigation and security service is or is to be 3543
provided; 3544

(i) Information services or tangible personal property is 3545
provided or ordered by means of a nine hundred telephone call; 3546

(j) Building maintenance and janitorial service is or is to 3547
be provided; 3548

(k) Employment service is or is to be provided; 3549

(l) Employment placement service is or is to be provided; 3550

(m) Exterminating service is or is to be provided; 3551

(n) Physical fitness facility service is or is to be provided;	3552 3553
(o) Recreation and sports club service is or is to be provided.	3554 3555
(4) All transactions by which printed, imprinted, overprinted, lithographic, multilithic, blueprinted, photostatic, or other productions or reproductions of written or graphic matter are or are to be furnished or transferred;	3556 3557 3558 3559
(5) The production or fabrication of tangible personal property for a consideration for consumers who furnish either directly or indirectly the materials used in the production of fabrication work; and include the furnishing, preparing, or serving for a consideration of any tangible personal property consumed on the premises of the person furnishing, preparing, or serving such tangible personal property. Except as provided in section 5739.03 of the Revised Code, a construction contract pursuant to which tangible personal property is or is to be incorporated into a structure or improvement on and becoming a part of real property is not a sale of such tangible personal property. The construction contractor is the consumer of such tangible personal property, provided that the sale and installation of carpeting, the sale and installation of agricultural land tile, the sale and erection or installation of portable grain bins, or the provision of landscaping and lawn care service and the transfer of property as part of such service is never a construction contract. The transfer of copyrighted motion picture films for exhibition purposes is not a sale, except such films as are used solely for advertising purposes. Other than as provided in this section, "sale" and "selling" do not include professional, insurance, or personal service transactions that involve the transfer of tangible personal property as an inconsequential element, for which no separate charges are made,	3560 3561 3562 3563 3564 3565 3566 3567 3568 3569 3570 3571 3572 3573 3574 3575 3576 3577 3578 3579 3580 3581 3582 3583

<u>or leases or rentals between members of an affiliated group.</u>	3584
As used in division (B)(5) of this section:	3585
(a) "Agricultural land tile" means fired clay or concrete tile, or flexible or rigid perforated plastic pipe or tubing, incorporated or to be incorporated into a subsurface drainage system appurtenant to land used or to be used directly in production by farming, agriculture, horticulture, or floriculture. The term does not include such materials when they are or are to be incorporated into a drainage system appurtenant to a building or structure even if the building or structure is used or to be used in such production.	3586 3587 3588 3589 3590 3591 3592 3593 3594
(b) "Portable grain bin" means a structure that is used or to be used by a person engaged in farming or agriculture to shelter the person's grain and that is designed to be disassembled without significant damage to its component parts.	3595 3596 3597 3598
(6) All transactions in which all of the shares of stock of a closely held corporation are transferred, if the corporation is not engaging in business and its entire assets consist of boats, planes, motor vehicles, or other tangible personal property operated primarily for the use and enjoyment of the shareholders;	3599 3600 3601 3602 3603
(7) All transactions in which a warranty, maintenance or service contract, or similar agreement by which the vendor of the warranty, contract, or agreement agrees to repair or maintain the tangible personal property of the consumer is or is to be provided;	3604 3605 3606 3607 3608
(8) All transactions by which a prepaid authorization number or a prepaid telephone calling card is or is to be transferred.	3609 3610
(C) "Vendor" means the person providing the service or by whom the transfer effected or license given by a sale is or is to be made or given and, for sales described in division (B)(3)(i) of this section, the telecommunications service vendor that provides	3611 3612 3613 3614

the nine hundred telephone service; if two or more persons are
engaged in business at the same place of business under a single
trade name in which all collections on account of sales by each
are made, such persons shall constitute a single vendor.

Physicians, dentists, hospitals, and veterinarians who are
engaged in selling tangible personal property as received from
others, such as eyeglasses, mouthwashes, dentifrices, or similar
articles, are vendors. Veterinarians who are engaged in
transferring to others for a consideration drugs, the dispensing
of which does not require an order of a licensed veterinarian or
physician under federal law, are vendors.

(D)(1) "Consumer" means the person for whom the service is
provided, to whom the transfer effected or license given by a sale
is or is to be made or given, to whom the service described in
division (B)(3)(f) or (i) of this section is charged, or to whom
the admission is granted.

(2) Physicians, dentists, hospitals, and blood banks operated
by nonprofit institutions and persons licensed to practice
veterinary medicine, surgery, and dentistry are consumers of all
tangible personal property and services purchased by them in
connection with the practice of medicine, dentistry, the rendition
of hospital or blood bank service, or the practice of veterinary
medicine, surgery, and dentistry. In addition to being consumers
of drugs administered by them or by their assistants according to
their direction, veterinarians also are consumers of drugs that
under federal law may be dispensed only by or upon the order of a
licensed veterinarian or physician, when transferred by them to
others for a consideration to provide treatment to animals as
directed by the veterinarian.

(3) A person who performs a facility management, or similar
service contract for a contractee is a consumer of all tangible
personal property and services purchased for use in connection

with the performance of such contract, regardless of whether title
to any such property vests in the contractee. The purchase of such
property and services is not subject to the exception for resale
under division (E)(1) of this section.

(4)(a) In the case of a person who purchases printed matter
for the purpose of distributing it or having it distributed to the
public or to a designated segment of the public, free of charge,
that person is the consumer of that printed matter, and the
purchase of that printed matter for that purpose is a sale.

(b) In the case of a person who produces, rather than
purchases, printed matter for the purpose of distributing it or
having it distributed to the public or to a designated segment of
the public, free of charge, that person is the consumer of all
tangible personal property and services purchased for use or
consumption in the production of that printed matter. That person
is not entitled to claim exception under division (E)(8) of this
section for any material incorporated into the printed matter or
any equipment, supplies, or services primarily used to produce the
printed matter.

(c) The distribution of printed matter to the public or to a
designated segment of the public, free of charge, is not a sale to
the members of the public to whom the printed matter is
distributed or to any persons who purchase space in the printed
matter for advertising or other purposes.

(5) A person who makes sales of any of the services listed in
division (B)(3) of this section is the consumer of any tangible
personal property used in performing the service. The purchase of
that property is not subject to the resale exception under
division (E)(1) of this section.

(6) A member of an affiliated group that purchases tangible
personal property for lease or rental to another member of the

same affiliated group is the consumer of any property purchased 3678
for that lease or rental and is not entitled to claim a resale 3679
exception on that purchase. The consumer may claim any exception 3680
or exemption that would be available to the other member of the 3681
affiliated group to whom the property is leased or rented if the 3682
other member had made the purchase of the property. 3683

(E) "Retail sale" and "sales at retail" include all sales 3684
except those in which the purpose of the consumer is: 3685

(1) To resell the thing transferred or benefit of the service 3686
provided, by a person engaging in business, in the form in which 3687
the same is, or is to be, received by the person; 3688

(2) To incorporate the thing transferred as a material or a 3689
part, into tangible personal property to be produced for sale by 3690
manufacturing, assembling, processing, or refining, or to use or 3691
consume the thing transferred directly in producing a product for 3692
sale by mining, including without limitation the extraction from 3693
the earth of all substances that are classed geologically as 3694
minerals, production of crude oil and natural gas, farming, 3695
agriculture, horticulture, or floriculture, and persons engaged in 3696
rendering farming, agricultural, horticultural, or floricultural 3697
services, and services in the exploration for, and production of, 3698
crude oil and natural gas, for others are deemed engaged directly 3699
in farming, agriculture, horticulture, and floriculture, or 3700
exploration for, and production of, crude oil and natural gas; 3701
directly in the rendition of a public utility service, except that 3702
the sales tax levied by section 5739.02 of the Revised Code shall 3703
be collected upon all meals, drinks, and food for human 3704
consumption sold upon Pullman and railroad coaches. This paragraph 3705
does not exempt or except from "retail sale" or "sales at retail" 3706
the sale of tangible personal property that is to be incorporated 3707
into a structure or improvement to real property. 3708

(3) To hold the thing transferred as security for the 3709

performance of an obligation of the vendor;	3710
(4) To use or consume the thing transferred in the process of reclamation as required by Chapters 1513. and 1514. of the Revised Code;	3711 3712 3713
(5) To resell, hold, use, or consume the thing transferred as evidence of a contract of insurance;	3714 3715
(6) To use or consume the thing directly in commercial fishing;	3716 3717
(7) To incorporate the thing transferred as a material or a part into, or to use or consume the thing transferred directly in the production of, magazines distributed as controlled circulation publications;	3718 3719 3720 3721
(8) To use or consume the thing transferred in the production and preparation in suitable condition for market and sale of printed, imprinted, overprinted, lithographic, multilithic, blueprinted, photostatic, or other productions or reproductions of written or graphic matter;	3722 3723 3724 3725 3726
(9) To use the thing transferred, as described in section 5739.011 of the Revised Code, primarily in a manufacturing operation to produce tangible personal property for sale;	3727 3728 3729
(10) To use the benefit of a warranty, maintenance or service contract, or similar agreement, as defined in division (B)(7) of this section, to repair or maintain tangible personal property, if all of the property that is the subject of the warranty, contract, or agreement would be exempt on its purchase from the tax imposed by section 5739.02 of the Revised Code;	3730 3731 3732 3733 3734 3735
(11) To use the thing transferred as qualified research and development equipment;	3736 3737
(12) To use or consume the thing transferred primarily in storing, transporting, mailing, or otherwise handling purchased	3738 3739

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sales inventory in a warehouse, distribution center, or similar 3740
facility when the inventory is primarily distributed outside this 3741
state to retail stores of the person who owns or controls the 3742
warehouse, distribution center, or similar facility, to retail 3743
stores of an affiliated group of which that person is a member, or 3744
by means of direct marketing. Division (E)(12) of this section 3745
does not apply to motor vehicles registered for operation on the 3746
public highways. As used in division (E)(12) of this section, 3747
"affiliated group" has the same meaning as in division (B)(3)(e) 3748
of this section and "direct marketing" has the same meaning as in 3749
division (B)~~(37)~~(36) of section 5739.02 of the Revised Code. 3750

(13) To use or consume the thing transferred to fulfill a 3751
contractual obligation incurred by a warrantor pursuant to a 3752
warranty provided as a part of the price of the tangible personal 3753
property sold or by a vendor of a warranty, maintenance or service 3754
contract, or similar agreement the provision of which is defined 3755
as a sale under division (B)(7) of this section; 3756

(14) To use or consume the thing transferred in the 3757
production of a newspaper for distribution to the public; 3758

(15) To use tangible personal property to perform a service 3759
listed in division (B)(3) of this section, if the property is or 3760
is to be permanently transferred to the consumer of the service as 3761
an integral part of the performance of the service. 3762

As used in division (E) of this section, "thing" includes all 3763
transactions included in divisions (B)(3)(a), (b), and (e) of this 3764
section. 3765

Sales conducted through a coin-operated device that activates 3766
vacuum equipment or equipment that dispenses water, whether or not 3767
in combination with soap or other cleaning agents or wax, to the 3768
consumer for the consumer's use on the premises in washing, 3769
cleaning, or waxing a motor vehicle, provided no other personal 3770

property or personal service is provided as part of the 3771
transaction, are not retail sales or sales at retail. 3772

(F) "Business" includes any activity engaged in by any person 3773
with the object of gain, benefit, or advantage, either direct or 3774
indirect. "Business" does not include the activity of a person in 3775
managing and investing the person's own funds. 3776

(G) "Engaging in business" means commencing, conducting, or 3777
continuing in business, and liquidating a business when the 3778
liquidator thereof holds itself out to the public as conducting 3779
such business. Making a casual sale is not engaging in business. 3780

(H)(1) "Price," except as provided in divisions (H)(2), (3), 3781
and ~~(3)~~(4) of this section, means the aggregate value in money of 3782
anything paid or delivered, or promised to be paid or delivered, 3783
in the complete performance of a retail sale, without any 3784
deduction on account of the cost of the property sold, cost of 3785
materials used, labor or service cost, interest, discount paid or 3786
allowed after the sale is consummated, or any other expense. If 3787
the retail sale consists of the rental or lease of tangible 3788
personal property, "price" means the aggregate value in money of 3789
anything paid or delivered, or promised to be paid or delivered, 3790
in the complete performance of the rental or lease, without any 3791
deduction for tax, interest, labor or service charge, damage 3792
liability waiver, termination or damage charge, discount paid or 3793
allowed after the lease is consummated, or any other expense. The 3794
sales tax shall be calculated and collected by the lessor on each 3795
payment made by the lessee. Price does not include the 3796
consideration received as a deposit refundable to the consumer 3797
upon return of a beverage container, the consideration received as 3798
a deposit on a carton or case that is used for such returnable 3799
containers, or the consideration received as a refundable security 3800
deposit for the use of tangible personal property to the extent 3801
that it actually is refunded, if the consideration for such 3802

refundable deposit is separately stated from the consideration 3803
received or to be received for the tangible personal property 3804
transferred in the retail sale. Such separation must appear in the 3805
sales agreement or on the initial invoice or initial billing 3806
rendered by the vendor to the consumer. Price is the amount 3807
received inclusive of the tax, provided the vendor establishes to 3808
the satisfaction of the tax commissioner that the tax was added to 3809
the price. When the price includes both a charge for tangible 3810
personal property and a charge for providing a service and the 3811
sale of the property and the charge for the service are separately 3812
taxable, or have a separately determinable tax status, the price 3813
shall be separately stated for each such charge so the tax can be 3814
correctly computed and charged. 3815

The tax collected by the vendor from the consumer under this 3816
chapter is not part of the price, but is a tax collection for the 3817
benefit of the state and of counties levying an additional sales 3818
tax pursuant to section 5739.021 or 5739.026 of the Revised Code 3819
and of transit authorities levying an additional sales tax 3820
pursuant to section 5739.023 of the Revised Code. Except for the 3821
discount authorized in section 5739.12 of the Revised Code, no 3822
person other than the state or such a county or transit authority 3823
shall derive any benefit from the collection or payment of such 3824
tax. 3825

(2) In the case of a sale of any new motor vehicle by a new 3826
motor vehicle dealer, as defined in section 4517.01 of the Revised 3827
Code, in which another motor vehicle is accepted by the dealer as 3828
part of the consideration received, "price" has the same meaning 3829
as in division (H)(1) of this section, reduced by the credit 3830
afforded the consumer by the dealer for the motor vehicle received 3831
in trade. 3832

(3) In the case of a sale of any watercraft or outboard motor 3833
by a watercraft dealer licensed in accordance with section 3834

1547.543 of the Revised Code, in which another watercraft, 3835
watercraft and trailer, or outboard motor is accepted by the 3836
dealer as part of the consideration received, "price" has the same 3837
meaning as in division (H)(1) of this section, reduced by the 3838
credit afforded the consumer by the dealer for the watercraft, 3839
watercraft and trailer, or outboard motor received in trade. As 3840
used in division (H)(3) of this section, "watercraft" includes an 3841
outdrive unit attached to the watercraft. 3842

(4) For sales, other than leases or rentals, of tangible 3843
personal property sold by one member of an affiliated group to 3844
another member of the same affiliated group: 3845

(a) If the selling member of the affiliated group purchased 3846
the personal property being sold in the same form in which the 3847
purchasing member is receiving it, "price" means the greater of 3848
the amount the selling member paid to its supplier to acquire the 3849
property and the amount charged by the selling member to the 3850
purchasing member. 3851

(b) If the selling member of the affiliated group produced 3852
the personal property being sold to the purchasing member by 3853
manufacturing, assembling, or refining, "price" means the greater 3854
of the amount the selling member's produced cost of the property 3855
or the amount charged by the selling member to the purchasing 3856
member. 3857

(I) "Receipts" means the total amount of the prices of the 3858
sales of vendors, provided that cash discounts allowed and taken 3859
on sales at the time they are consummated are not included, minus 3860
any amount deducted as a bad debt pursuant to section 5739.121 of 3861
the Revised Code. "Receipts" does not include the sale price of 3862
property returned or services rejected by consumers when the full 3863
sale price and tax are refunded either in cash or by credit. 3864

(J) "Place of business" means any location at which a person 3865

engages in business. 3866

(K) "Premises" includes any real property or portion thereof 3867
upon which any person engages in selling tangible personal 3868
property at retail or making retail sales and also includes any 3869
real property or portion thereof designated for, or devoted to, 3870
use in conjunction with the business engaged in by such person. 3871

(L) "Casual sale" means a sale of an item of tangible 3872
personal property that was obtained by the person making the sale, 3873
through purchase or otherwise, for the person's own use in this 3874
state and was previously subject to any state's taxing 3875
jurisdiction on its sale or use, and includes such items acquired 3876
for the seller's use that are sold by an auctioneer employed 3877
directly by the person for such purpose, provided the location of 3878
such sales is not the auctioneer's permanent place of business. As 3879
used in this division, "permanent place of business" includes any 3880
location where such auctioneer has conducted more than two 3881
auctions during the year. 3882

(M) "Hotel" means every establishment kept, used, maintained, 3883
advertised, or held out to the public to be a place where sleeping 3884
accommodations are offered to guests, in which five or more rooms 3885
are used for the accommodation of such guests, whether the rooms 3886
are in one or several structures. 3887

(N) "Transient guests" means persons occupying a room or 3888
rooms for sleeping accommodations for less than thirty consecutive 3889
days. 3890

(O) "Making retail sales" means the effecting of transactions 3891
wherein one party is obligated to pay the price and the other 3892
party is obligated to provide a service or to transfer title to or 3893
possession of the item sold. "Making retail sales" does not 3894
include the preliminary acts of promoting or soliciting the retail 3895
sales, other than the distribution of printed matter which 3896

displays or describes and prices the item offered for sale, nor
does it include delivery of a predetermined quantity of tangible
personal property or transportation of property or personnel to or
from a place where a service is performed, regardless of whether
the vendor is a delivery vendor.

(P) "Used directly in the rendition of a public utility
service" means that property which is to be incorporated into and
will become a part of the consumer's production, transmission,
transportation, or distribution system and that retains its
classification as tangible personal property after such
incorporation; fuel or power used in the production, transmission,
transportation, or distribution system; and tangible personal
property used in the repair and maintenance of the production,
transmission, transportation, or distribution system, including
only such motor vehicles as are specially designed and equipped
for such use. Tangible personal property and services used
primarily in providing highway transportation for hire are not
used in providing a public utility service as defined in this
division.

(Q) "Refining" means removing or separating a desirable
product from raw or contaminated materials by distillation or
physical, mechanical, or chemical processes.

(R) "Assembly" and "assembling" mean attaching or fitting
together parts to form a product, but do not include packaging a
product.

(S) "Manufacturing operation" means a process in which
materials are changed, converted, or transformed into a different
state or form from which they previously existed and includes
refining materials, assembling parts, and preparing raw materials
and parts by mixing, measuring, blending, or otherwise committing
such materials or parts to the manufacturing process.
"Manufacturing operation" does not include packaging.

(T) "Fiscal officer" means, with respect to a regional transit authority, the secretary-treasurer thereof, and with respect to a county that is a transit authority, the fiscal officer of the county transit board if one is appointed pursuant to section 306.03 of the Revised Code or the county auditor if the board of county commissioners operates the county transit system.

(U) "Transit authority" means a regional transit authority created pursuant to section 306.31 of the Revised Code or a county in which a county transit system is created pursuant to section 306.01 of the Revised Code. For the purposes of this chapter, a transit authority must extend to at least the entire area of a single county. A transit authority that includes territory in more than one county must include all the area of the most populous county that is a part of such transit authority. County population shall be measured by the most recent census taken by the United States census bureau.

(V) "Legislative authority" means, with respect to a regional transit authority, the board of trustees thereof, and with respect to a county that is a transit authority, the board of county commissioners.

(W) "Territory of the transit authority" means all of the area included within the territorial boundaries of a transit authority as they from time to time exist. Such territorial boundaries must at all times include all the area of a single county or all the area of the most populous county that is a part of such transit authority. County population shall be measured by the most recent census taken by the United States census bureau.

(X) "Providing a service" means providing or furnishing anything described in division (B)(3) of this section for consideration.

(Y)(1)(a) "Automatic data processing" means processing of

others' data, including keypunching or similar data entry services 3960
together with verification thereof, or providing access to 3961
computer equipment for the purpose of processing data. 3962

(b) "Computer services" means providing services consisting 3963
of specifying computer hardware configurations and evaluating 3964
technical processing characteristics, computer programming, and 3965
training of computer programmers and operators, provided in 3966
conjunction with and to support the sale, lease, or operation of 3967
taxable computer equipment or systems. 3968

(c) "Electronic information services" means providing access 3969
to computer equipment by means of telecommunications equipment for 3970
the purpose of either of the following: 3971

(i) Examining or acquiring data stored in or accessible to 3972
the computer equipment; 3973

(ii) Placing data into the computer equipment to be retrieved 3974
by designated recipients with access to the computer equipment. 3975
3976

(d) "Automatic data processing, computer services, or 3977
electronic information services" shall not include personal or 3978
professional services. 3979

(2) As used in divisions (B)(3)(e) and (Y)(1) of this 3980
section, "personal and professional services" means all services 3981
other than automatic data processing, computer services, or 3982
electronic information services, including but not limited to: 3983

(a) Accounting and legal services such as advice on tax 3984
matters, asset management, budgetary matters, quality control, 3985
information security, and auditing and any other situation where 3986
the service provider receives data or information and studies, 3987
alters, analyzes, interprets, or adjusts such material; 3988

(b) Analyzing business policies and procedures; 3989

(c) Identifying management information needs;	3990
(d) Feasibility studies, including economic and technical analysis of existing or potential computer hardware or software needs and alternatives;	3991 3992 3993
(e) Designing policies, procedures, and custom software for collecting business information, and determining how data should be summarized, sequenced, formatted, processed, controlled, and reported so that it will be meaningful to management;	3994 3995 3996 3997
(f) Developing policies and procedures that document how business events and transactions are to be authorized, executed, and controlled;	3998 3999 4000
(g) Testing of business procedures;	4001
(h) Training personnel in business procedure applications;	4002
(i) Providing credit information to users of such information by a consumer reporting agency, as defined in the "Fair Credit Reporting Act," 84 Stat. 1114, 1129 (1970), 15 U.S.C. 1681a(f), or as hereafter amended, including but not limited to gathering, organizing, analyzing, recording, and furnishing such information by any oral, written, graphic, or electronic medium;	4003 4004 4005 4006 4007 4008
(j) Providing debt collection services by any oral, written, graphic, or electronic means.	4009 4010
The services listed in divisions (Y)(2)(a) to (j) of this section are not automatic data processing or computer services.	4011 4012
(Z) "Highway transportation for hire" means the transportation of personal property belonging to others for consideration by any of the following:	4013 4014 4015
(1) The holder of a permit or certificate issued by this state or the United States authorizing the holder to engage in transportation of personal property belonging to others for consideration over or on highways, roadways, streets, or any	4016 4017 4018 4019

similar public thoroughfare; 4020

(2) A person who engages in the transportation of personal 4021
property belonging to others for consideration over or on 4022
highways, roadways, streets, or any similar public thoroughfare 4023
but who could not have engaged in such transportation on December 4024
11, 1985, unless the person was the holder of a permit or 4025
certificate of the types described in division (Z)(1) of this 4026
section; 4027

(3) A person who leases a motor vehicle to and operates it 4028
for a person described by division (Z)(1) or (2) of this section. 4029

"Highway transportation for hire" does not include 4030
transportation of tangible personal property by one member of an 4031
affiliated group for another member of the same affiliated group. 4032

(AA) "Telecommunications service" means the transmission of 4033
any interactive, two-way electromagnetic communications, including 4034
voice, image, data, and information, through the use of any medium 4035
such as wires, cables, microwaves, cellular radio, radio waves, 4036
light waves, or any combination of those or similar media. 4037
"Telecommunications service" includes message toll service even 4038
though the vendor provides the message toll service by means of 4039
wide area transmission type service or private communications 4040
service purchased from another telecommunications service 4041
provider, but does not include any of the following: 4042

(1) Sales of incoming or outgoing wide area transmission 4043
service or wide area transmission type service, including eight 4044
hundred or eight-hundred-type service, to the person contracting 4045
for the receipt of that service; 4046

(2) Sales of private communications service to the person 4047
contracting for the receipt of that service that entitles the 4048
purchaser to exclusive or priority use of a communications channel 4049
or group of channels between exchanges; 4050

(3) Sales of telecommunications service by companies subject to the excise tax imposed by Chapter 5727. of the Revised Code;	4051 4052
(4) Sales of telecommunications service to a provider of telecommunications service, including access services, for use in providing telecommunications service;	4053 4054 4055
(5) Value-added nonvoice services in which computer processing applications are used to act on the form, content, code, or protocol of the information to be transmitted;	4056 4057 4058
(6) Transmission of interactive video programming by a cable television system as defined in section 505.90 of the Revised Code.	4059 4060 4061
(BB) "Industrial laundry cleaning services" means removing soil or dirt from or supplying towels, linens, or articles of clothing that belong to others and are used in a trade or business.	4062 4063 4064 4065
(CC) "Magazines distributed as controlled circulation publications" means magazines containing at least twenty-four pages, at least twenty-five per cent editorial content, issued at regular intervals four or more times a year, and circulated without charge to the recipient, provided that such magazines are not owned or controlled by individuals or business concerns which conduct such publications as an auxiliary to, and essentially for the advancement of the main business or calling of, those who own or control them.	4066 4067 4068 4069 4070 4071 4072 4073 4074
(DD) "Landscaping and lawn care service" means the services of planting, seeding, sodding, removing, cutting, trimming, pruning, mulching, aerating, applying chemicals, watering, fertilizing, and providing similar services to establish, promote, or control the growth of trees, shrubs, flowers, grass, ground cover, and other flora, or otherwise maintaining a lawn or landscape grown or maintained by the owner for ornamentation or	4075 4076 4077 4078 4079 4080 4081

other nonagricultural purpose. However, "landscaping and lawn care
service" does not include the providing of such services by a
person who has less than five thousand dollars in sales of such
services during the calendar year.

(EE) "Private investigation and security service" means the
performance of any activity for which the provider of such service
is required to be licensed pursuant to Chapter 4749. of the
Revised Code, or would be required to be so licensed in performing
such services in this state, and also includes the services of
conducting polygraph examinations and of monitoring or overseeing
the activities on or in, or the condition of, the consumer's home,
business, or other facility by means of electronic or similar
monitoring devices. "Private investigation and security service"
does not include special duty services provided by off-duty police
officers, deputy sheriffs, and other peace officers regularly
employed by the state or a political subdivision.

(FF) "Information services" means providing conversation,
giving consultation or advice, playing or making a voice or other
recording, making or keeping a record of the number of callers,
and any other service provided to a consumer by means of a nine
hundred telephone call, except when the nine hundred telephone
call is the means by which the consumer makes a contribution to a
recognized charity.

(GG) "Research and development" means designing, creating, or
formulating new or enhanced products, equipment, or manufacturing
processes, and conducting scientific or technological inquiry and
experimentation in the physical sciences with the goal of
increasing scientific knowledge which may reveal the bases for new
or enhanced products, equipment, or manufacturing processes.

(HH) "Qualified research and development equipment" means
capitalized tangible personal property, and leased personal

property that would be capitalized if purchased, used by a person 4114
primarily to perform research and development. Tangible personal 4115
property primarily used in testing, as defined in division (A)(4) 4116
of section 5739.011 of the Revised Code, or used for recording or 4117
storing test results, is not qualified research and development 4118
equipment unless such property is primarily used by the consumer 4119
in testing the product, equipment, or manufacturing process being 4120
created, designed, or formulated by the consumer in the research 4121
and development activity or in recording or storing such test 4122
results. 4123

(II) "Building maintenance and janitorial service" means 4124
cleaning the interior or exterior of a building and any tangible 4125
personal property located therein or thereon, including any 4126
services incidental to such cleaning for which no separate charge 4127
is made. However, "building maintenance and janitorial service" 4128
does not include the providing of such service by a person who has 4129
less than five thousand dollars in sales of such service during 4130
the calendar year. 4131

(JJ) "Employment service" means providing or supplying 4132
personnel, on a temporary or long-term basis, to perform work or 4133
labor under the supervision or control of another, when the 4134
personnel so supplied receive their wages, salary, or other 4135
compensation from the provider of the service. "Employment 4136
service" does not include: 4137

(1) Acting as a contractor or subcontractor, where the 4138
personnel performing the work are not under the direct control of 4139
the purchaser. 4140

(2) Medical and health care services. 4141

(3) Supplying personnel to a purchaser pursuant to a contract 4142
of at least one year between the service provider and the 4143
purchaser that specifies that each employee covered under the 4144

contract is assigned to the purchaser on a permanent basis. 4145

(4) Transactions between members of an affiliated group, as 4146
defined in division (B)(3)(e) of this section. 4147

(KK) "Employment placement service" means locating or finding 4148
employment for a person or finding or locating an employee to fill 4149
an available position. 4150

(LL) "Exterminating service" means eradicating or attempting 4151
to eradicate vermin infestations from a building or structure, or 4152
the area surrounding a building or structure, and includes 4153
activities to inspect, detect, or prevent vermin infestation of a 4154
building or structure. 4155

(MM) "Physical fitness facility service" means all 4156
transactions by which a membership is granted, maintained, or 4157
renewed, including initiation fees, membership dues, renewal fees, 4158
monthly minimum fees, and other similar fees and dues, by a 4159
physical fitness facility such as an athletic club, health spa, or 4160
gymnasium, which entitles the member to use the facility for 4161
physical exercise. 4162

(NN) "Recreation and sports club service" means all 4163
transactions by which a membership is granted, maintained, or 4164
renewed, including initiation fees, membership dues, renewal fees, 4165
monthly minimum fees, and other similar fees and dues, by a 4166
recreation and sports club, which entitles the member to use the 4167
facilities of the organization. "Recreation and sports club" means 4168
an organization that has ownership of, or controls or leases on a 4169
continuing, long-term basis, the facilities used by its members 4170
and includes an aviation club, gun or shooting club, yacht club, 4171
card club, swimming club, tennis club, golf club, country club, 4172
riding club, amateur sports club, or similar organization. 4173

(OO) "Livestock" means farm animals commonly raised for food 4174
or food production, and includes but is not limited to cattle, 4175

sheep, goats, swine, and poultry. "Livestock" does not include 4176
invertebrates, fish, amphibians, reptiles, horses, domestic pets, 4177
animals for use in laboratories or for exhibition, or other 4178
animals not commonly raised for food or food production. 4179

(PP) "Livestock structure" means a building or structure used 4180
exclusively for the housing, raising, feeding, or sheltering of 4181
livestock, and includes feed storage or handling structures and 4182
structures for livestock waste handling. 4183

(QQ) "Horticulture" means the growing, cultivation, and 4184
production of flowers, fruits, herbs, vegetables, sod, mushrooms, 4185
and nursery stock. As used in this division, "nursery stock" has 4186
the same meaning as in section 927.51 of the Revised Code. 4187

(RR) "Horticulture structure" means a building or structure 4188
used exclusively for the commercial growing, raising, or 4189
overwintering of horticultural products, and includes the area 4190
used for stocking, storing, and packing horticultural products 4191
when done in conjunction with the production of those products. 4192

(SS) "Newspaper" means an unbound publication bearing a title 4193
or name that is regularly published, at least as frequently as 4194
biweekly, and distributed from a fixed place of business to the 4195
public in a specific geographic area, and that contains a 4196
substantial amount of news matter of international, national, or 4197
local events of interest to the general public. 4198

(TT) "Professional racing team" means a person that employs 4199
at least twenty full-time employees for the purpose of conducting 4200
a motor vehicle racing business for profit. The person must 4201
conduct the business with the purpose of racing one or more motor 4202
racing vehicles in at least ten competitive professional racing 4203
events each year that comprise all or part of a motor racing 4204
series sanctioned by one or more motor racing sanctioning 4205
organizations. A "motor racing vehicle" means a vehicle for which 4206

the chassis, engine, and parts are designed exclusively for motor racing, and does not include a stock or production model vehicle that may be modified for use in racing. For the purposes of this division:

(1) A "competitive professional racing event" is a motor vehicle racing event sanctioned by one or more motor racing sanctioning organizations, at which aggregate cash prizes in excess of eight hundred thousand dollars are awarded to the competitors.

(2) "Full-time employee" means an individual who is employed for consideration for thirty-five or more hours a week, or who renders any other standard of service generally accepted by custom or specified by contract as full-time employment.

(UU)(1) "Prepaid authorization number" means a numeric or alphanumeric combination that represents a prepaid account that can be used by the account holder solely to obtain telecommunications service, and includes any renewals or increases in the prepaid account.

(2) "Prepaid telephone calling card" means a tangible item that contains a prepaid authorization number that can be used solely to obtain telecommunications service, and includes any renewals or increases in the prepaid account.

(VV) "Affiliated group" means two or more persons related in such a way that one person, directly or indirectly, owns or controls the business operation of another member of the group. In the case of corporations with stock, one corporation owns or controls another if it owns or controls, directly or indirectly, fifty per cent or more of the other corporation's common stock with voting rights.

Sec. 5739.02. For the purpose of providing revenue with which

to meet the needs of the state, for the use of the general revenue 4237
fund of the state, for the purpose of securing a thorough and 4238
efficient system of common schools throughout the state, for the 4239
purpose of affording revenues, in addition to those from general 4240
property taxes, permitted under constitutional limitations, and 4241
from other sources, for the support of local governmental 4242
functions, and for the purpose of reimbursing the state for the 4243
expense of administering this chapter, an excise tax is hereby 4244
levied on each retail sale made in this state. 4245

(A) The tax shall be collected pursuant to the schedules in 4246
section 5739.025 of the Revised Code. 4247

The tax applies and is collectible when the sale is made, 4248
regardless of the time when the price is paid or delivered. 4249

In the case of a sale, the price of which consists in whole 4250
or in part of rentals for the use of the thing transferred, the 4251
tax, as regards such rentals, shall be measured by the 4252
installments thereof. 4253

In the case of a sale of a service defined under division 4254
(MM) or (NN) of section 5739.01 of the Revised Code, the price of 4255
which consists in whole or in part of a membership for the receipt 4256
of the benefit of the service, the tax applicable to the sale 4257
shall be measured by the installments thereof. 4258

(B) The tax does not apply to the following: 4259

(1) Sales to the state or any of its political subdivisions, 4260
or to any other state or its political subdivisions if the laws of 4261
that state exempt from taxation sales made to this state and its 4262
political subdivisions; 4263

(2) Sales of food for human consumption off the premises 4264
where sold; 4265

(3) Sales of food sold to students only in a cafeteria, 4266
dormitory, fraternity, or sorority maintained in a private, 4267

public, or parochial school, college, or university;	4268
(4) Sales of newspapers, and of magazine subscriptions	4269
shipped by second class mail, and sales or transfers of magazines	4270
distributed as controlled circulation publications;	4271
(5) The furnishing, preparing, or serving of meals without	4272
charge by an employer to an employee provided the employer records	4273
the meals as part compensation for services performed or work	4274
done;	4275
(6) Sales of motor fuel upon receipt, use, distribution, or	4276
sale of which in this state a tax is imposed by the law of this	4277
state, but this exemption shall not apply to the sale of motor	4278
fuel on which a refund of the tax is allowable under section	4279
5735.14 of the Revised Code; and the tax commissioner may deduct	4280
the amount of tax levied by this section applicable to the price	4281
of motor fuel when granting a refund of motor fuel tax pursuant to	4282
section 5735.14 of the Revised Code and shall cause the amount	4283
deducted to be paid into the general revenue fund of this state;	4284
(7) Sales of natural gas by a natural gas company, of water	4285
by a water-works company, or of steam by a heating company, if in	4286
each case the thing sold is delivered to consumers through pipes	4287
or conduits, and all sales of communications services by a	4288
telephone or telegraph company, all terms as defined in section	4289
5727.01 of the Revised Code;	4290
(8) Casual sales by a person, or auctioneer employed directly	4291
by the person to conduct such sales, except as to such sales of	4292
motor vehicles, watercraft or outboard motors required to be	4293
titled under section 1548.06 of the Revised Code, watercraft	4294
documented with the United States coast guard, snowmobiles, and	4295
all-purpose vehicles as defined in section 4519.01 of the Revised	4296
Code;	4297
(9) Sales of services or tangible personal property, other	4298

than motor vehicles, mobile homes, and manufactured homes, by
churches, organizations exempt from taxation under section
501(c)(3) of the Internal Revenue Code of 1986, or nonprofit
organizations operated exclusively for charitable purposes as
defined in division (B)(12) of this section, provided that the
number of days on which such tangible personal property or
services, other than items never subject to the tax, are sold does
not exceed six in any calendar year. If the number of days on
which such sales are made exceeds six in any calendar year, the
church or organization shall be considered to be engaged in
business and all subsequent sales by it shall be subject to the
tax. In counting the number of days, all sales by groups within a
church or within an organization shall be considered to be sales
of that church or organization, except that sales made by separate
student clubs and other groups of students of a primary or
secondary school, and sales made by a parent-teacher association,
booster group, or similar organization that raises money to
support or fund curricular or extracurricular activities of a
primary or secondary school, shall not be considered to be sales
of such school, and sales by each such club, group, association,
or organization shall be counted separately for purposes of the
six-day limitation. This division does not apply to sales by a
noncommercial educational radio or television broadcasting
station.

(10) Sales not within the taxing power of this state under
the Constitution of the United States;

(11) The transportation of persons or property, unless the
transportation is by a private investigation and security service;

(12) Sales of tangible personal property or services to
churches, to organizations exempt from taxation under section
501(c)(3) of the Internal Revenue Code of 1986, and to any other
nonprofit organizations operated exclusively for charitable

purposes in this state, no part of the net income of which inures 4331
to the benefit of any private shareholder or individual, and no 4332
substantial part of the activities of which consists of carrying 4333
on propaganda or otherwise attempting to influence legislation; 4334
sales to offices administering one or more homes for the aged or 4335
one or more hospital facilities exempt under section 140.08 of the 4336
Revised Code; and sales to organizations described in division (D) 4337
of section 5709.12 of the Revised Code. 4338

"Charitable purposes" means the relief of poverty; the 4339
improvement of health through the alleviation of illness, disease, 4340
or injury; the operation of an organization exclusively for the 4341
provision of professional, laundry, printing, and purchasing 4342
services to hospitals or charitable institutions; the operation of 4343
a home for the aged, as defined in section 5701.13 of the Revised 4344
Code; the operation of a radio or television broadcasting station 4345
that is licensed by the federal communications commission as a 4346
noncommercial educational radio or television station; the 4347
operation of a nonprofit animal adoption service or a county 4348
humane society; the promotion of education by an institution of 4349
learning that maintains a faculty of qualified instructors, 4350
teaches regular continuous courses of study, and confers a 4351
recognized diploma upon completion of a specific curriculum; the 4352
operation of a parent-teacher association, booster group, or 4353
similar organization primarily engaged in the promotion and 4354
support of the curricular or extracurricular activities of a 4355
primary or secondary school; the operation of a community or area 4356
center in which presentations in music, dramatics, the arts, and 4357
related fields are made in order to foster public interest and 4358
education therein; the production of performances in music, 4359
dramatics, and the arts; or the promotion of education by an 4360
organization engaged in carrying on research in, or the 4361
dissemination of, scientific and technological knowledge and 4362

information primarily for the public. 4363

Nothing in this division shall be deemed to exempt sales to 4364
any organization for use in the operation or carrying on of a 4365
trade or business, or sales to a home for the aged for use in the 4366
operation of independent living facilities as defined in division 4367
(A) of section 5709.12 of the Revised Code. 4368

(13) Building and construction materials and services sold to 4369
construction contractors for incorporation into a structure or 4370
improvement to real property under a construction contract with 4371
this state or a political subdivision thereof, or with the United 4372
States government or any of its agencies; building and 4373
construction materials and services sold to construction 4374
contractors for incorporation into a structure or improvement to 4375
real property that are accepted for ownership by this state or any 4376
of its political subdivisions, or by the United States government 4377
or any of its agencies at the time of completion of such 4378
structures or improvements; building and construction materials 4379
sold to construction contractors for incorporation into a 4380
horticulture structure or livestock structure for a person engaged 4381
in the business of horticulture or producing livestock; building 4382
materials and services sold to a construction contractor for 4383
incorporation into a house of public worship or religious 4384
education, or a building used exclusively for charitable purposes 4385
under a construction contract with an organization whose purpose 4386
is as described in division (B)(12) of this section; building 4387
materials and services sold to a construction contractor for 4388
incorporation into a building under a construction contract with 4389
an organization exempt from taxation under section 501(c)(3) of 4390
the Internal Revenue Code of 1986 when the building is to be used 4391
exclusively for the organization's exempt purposes; building and 4392
construction materials sold for incorporation into the original 4393
construction of a sports facility under section 307.696 of the 4394

As Reported by the House Finance and Appropriations Committee

Revised Code; and building and construction materials and services 4395
sold to a construction contractor for incorporation into real 4396
property outside this state if such materials and services, when 4397
sold to a construction contractor in the state in which the real 4398
property is located for incorporation into real property in that 4399
state, would be exempt from a tax on sales levied by that state; 4400

(14) Sales of ships or vessels or rail rolling stock used or 4401
to be used principally in interstate or foreign commerce, and 4402
repairs, alterations, fuel, and lubricants for such ships or 4403
vessels or rail rolling stock; 4404

(15) Sales to persons engaged in any of the activities 4405
mentioned in division (E)(2) or (9) of section 5739.01 of the 4406
Revised Code, to persons engaged in making retail sales, or to 4407
persons who purchase for sale from a manufacturer tangible 4408
personal property that was produced by the manufacturer in 4409
accordance with specific designs provided by the purchaser, of 4410
packages, including material, labels, and parts for packages, and 4411
of machinery, equipment, and material for use primarily in 4412
packaging tangible personal property produced for sale, including 4413
any machinery, equipment, and supplies used to make labels or 4414
packages, to prepare packages or products for labeling, or to 4415
label packages or products, by or on the order of the person doing 4416
the packaging, or sold at retail. "Packages" includes bags, 4417
baskets, cartons, crates, boxes, cans, bottles, bindings, 4418
wrappings, and other similar devices and containers, and 4419
"packaging" means placing therein. 4420

(16) Sales of food to persons using food stamp benefits to 4421
purchase the food. As used in division (B)(16) of this section, 4422
"food" has the same meaning as in the "Food Stamp Act of 1977," 91 4423
Stat. 958, 7 U.S.C. 2012, as amended, and federal regulations 4424
adopted pursuant to that act. 4425

(17) Sales to persons engaged in farming, agriculture, 4426

horticulture, or floriculture, of tangible personal property for 4427
use or consumption directly in the production by farming, 4428
agriculture, horticulture, or floriculture of other tangible 4429
personal property for use or consumption directly in the 4430
production of tangible personal property for sale by farming, 4431
agriculture, horticulture, or floriculture; or material and parts 4432
for incorporation into any such tangible personal property for use 4433
or consumption in production; and of tangible personal property 4434
for such use or consumption in the conditioning or holding of 4435
products produced by and for such use, consumption, or sale by 4436
persons engaged in farming, agriculture, horticulture, or 4437
floriculture, except where such property is incorporated into real 4438
property; 4439

(18) Sales of drugs dispensed by a licensed pharmacist upon 4440
the order of a licensed health professional authorized to 4441
prescribe drugs to a human being, as the term "licensed health 4442
professional authorized to prescribe drugs" is defined in section 4443
4729.01 of the Revised Code; insulin as recognized in the official 4444
United States pharmacopoeia; urine and blood testing materials 4445
when used by diabetics or persons with hypoglycemia to test for 4446
glucose or acetone; hypodermic syringes and needles when used by 4447
diabetics for insulin injections; epoetin alfa when purchased for 4448
use in the treatment of persons with end-stage renal disease; 4449
hospital beds when purchased for use by persons with medical 4450
problems for medical purposes; and oxygen and oxygen-dispensing 4451
equipment when purchased for use by persons with medical problems 4452
for medical purposes; 4453

(19)(a) Sales of artificial limbs or portion thereof, breast 4454
prostheses, and other prosthetic devices for humans; braces or 4455
other devices for supporting weakened or nonfunctioning parts of 4456
the human body; crutches or other devices to aid human 4457
perambulation; and items of tangible personal property used to 4458

supplement impaired functions of the human body such as 4459
respiration, hearing, or elimination; 4460

(b) Sales of wheelchairs; items incorporated into or used in 4461
conjunction with a motor vehicle for the purpose of transporting 4462
wheelchairs, other than transportation conducted in connection 4463
with the sale or delivery of wheelchairs; and items incorporated 4464
into or used in conjunction with a motor vehicle that are 4465
specifically designed to assist a person with a disability to 4466
access or operate the motor vehicle. As used in this division, 4467
"person with a disability" means any person who has lost the use 4468
of one or both legs or one or both arms, who is blind, deaf, or 4469
disabled to the extent that the person is unable to move about 4470
without the aid of crutches or a wheelchair, or whose mobility is 4471
restricted by a permanent cardiovascular, pulmonary, or other 4472
disabling condition. 4473

(c) No exemption under this division shall be allowed for 4474
nonprescription drugs, medicines, or remedies; items or devices 4475
used to supplement vision; items or devices whose function is 4476
solely or primarily cosmetic; or physical fitness equipment. This 4477
division does not apply to sales to a physician or medical 4478
facility for use in the treatment of a patient. 4479

(20) Sales of emergency and fire protection vehicles and 4480
equipment to nonprofit organizations for use solely in providing 4481
fire protection and emergency services, including trauma care and 4482
emergency medical services, for political subdivisions of the 4483
state; 4484

(21) Sales of tangible personal property manufactured in this 4485
state, if sold by the manufacturer in this state to a retailer for 4486
use in the retail business of the retailer outside of this state 4487
and if possession is taken from the manufacturer by the purchaser 4488
within this state for the sole purpose of immediately removing the 4489
same from this state in a vehicle owned by the purchaser; 4490

	4491
(22) Sales of services provided by the state or any of its political subdivisions, agencies, instrumentalities, institutions, or authorities, or by governmental entities of the state or any of its political subdivisions, agencies, instrumentalities, institutions, or authorities;	4492 4493 4494 4495 4496
(23) Sales of motor vehicles to nonresidents of this state upon the presentation of an affidavit executed in this state by the nonresident purchaser affirming that the purchaser is a nonresident of this state, that possession of the motor vehicle is taken in this state for the sole purpose of immediately removing it from this state, that the motor vehicle will be permanently titled and registered in another state, and that the motor vehicle will not be used in this state;	4497 4498 4499 4500 4501 4502 4503 4504
(24) Sales to persons engaged in the preparation of eggs for sale of tangible personal property used or consumed directly in such preparation, including such tangible personal property used for cleaning, sanitizing, preserving, grading, sorting, and classifying by size; packages, including material and parts for packages, and machinery, equipment, and material for use in packaging eggs for sale; and handling and transportation equipment and parts therefor, except motor vehicles licensed to operate on public highways, used in intraplant or interplant transfers or shipment of eggs in the process of preparation for sale, when the plant or plants within or between which such transfers or shipments occur are operated by the same person. "Packages" includes containers, cases, baskets, flats, fillers, filler flats, cartons, closure materials, labels, and labeling materials, and "packaging" means placing therein.	4505 4506 4507 4508 4509 4510 4511 4512 4513 4514 4515 4516 4517 4518 4519
(25)(a) Sales of water to a consumer for residential use, except the sale of bottled water, distilled water, mineral water, carbonated water, or ice;	4520 4521 4522

(b) Sales of water by a nonprofit corporation engaged exclusively in the treatment, distribution, and sale of water to consumers, if such water is delivered to consumers through pipes or tubing.	4523 4524 4525 4526
(26) Fees charged for inspection or reinspection of motor vehicles under section 3704.14 of the Revised Code;	4527 4528
(27) Sales to persons licensed to conduct a food service operation pursuant to section 3717.43 of the Revised Code, of tangible personal property primarily used directly for the following:	4529 4530 4531 4532
(a) To prepare food for human consumption for sale;	4533
(b) To preserve food that has been or will be prepared for human consumption for sale by the food service operator, not including tangible personal property used to display food for selection by the consumer;	4534 4535 4536 4537
(c) To clean tangible personal property used to prepare or serve food for human consumption for sale.	4538 4539
(28) Sales of animals by nonprofit animal adoption services or county humane societies;	4540 4541
(29) Sales of services to a corporation described in division (A) of section 5709.72 of the Revised Code, and sales of tangible personal property that qualifies for exemption from taxation under section 5709.72 of the Revised Code;	4542 4543 4544 4545
(30) Sales and installation of agricultural land tile, as defined in division (B)(5)(a) of section 5739.01 of the Revised Code;	4546 4547 4548
(31) Sales and erection or installation of portable grain bins, as defined in division (B)(5)(b) of section 5739.01 of the Revised Code;	4549 4550 4551
(32) The sale, lease, repair, and maintenance of, parts for,	4552

or items attached to or incorporated in, motor vehicles that are 4553
primarily used ~~for transporting tangible personal property to~~ 4554
provide highway transportation for hire by a person engaged in 4555
~~highway transportation for hire~~ providing that service; 4556

(33) Sales to the state headquarters of any veterans' 4557
organization in Ohio that is either incorporated and issued a 4558
charter by the congress of the United States or is recognized by 4559
the United States veterans administration, for use by the 4560
headquarters; 4561

(34) Sales to a telecommunications service vendor of tangible 4562
personal property and services used directly and primarily in 4563
transmitting, receiving, switching, or recording any interactive, 4564
two-way electromagnetic communications, including voice, image, 4565
data, and information, through the use of any medium, including, 4566
but not limited to, poles, wires, cables, switching equipment, 4567
computers, and record storage devices and media, and component 4568
parts for the tangible personal property. The exemption provided 4569
in division (B)(34) of this section shall be in lieu of all other 4570
exceptions under division (E)(2) of section 5739.01 of the Revised 4571
Code to which a telecommunications service vendor may otherwise be 4572
entitled based upon the use of the thing purchased in providing 4573
the telecommunications service. 4574

(35) Sales of investment metal bullion and investment coins. 4575
"Investment metal bullion" means any elementary precious metal 4576
that has been put through a process of smelting or refining, 4577
including, but not limited to, gold, silver, platinum, and 4578
palladium, and which is in such state or condition that its value 4579
depends upon its content and not upon its form. "Investment metal 4580
bullion" does not include fabricated precious metal that has been 4581
processed or manufactured for one or more specific and customary 4582
industrial, professional, or artistic uses. "Investment coins" 4583
means numismatic coins or other forms of money and legal tender 4584

manufactured of gold, silver, platinum, palladium, or other metal 4585
under the laws of the United States or any foreign nation with a 4586
fair market value greater than any statutory or nominal value of 4587
such coins. 4588

(36)(a) Sales where the purpose of the consumer is to use or 4589
consume the things transferred in making retail sales and 4590
consisting of newspaper inserts, catalogues, coupons, flyers, gift 4591
certificates, or other advertising material that prices and 4592
describes tangible personal property offered for retail sale. 4593

(b) Sales to direct marketing vendors of preliminary 4594
materials such as photographs, artwork, and typesetting that will 4595
be used in printing advertising material; of printed matter that 4596
offers free merchandise or chances to win sweepstake prizes and 4597
that is mailed to potential customers with advertising material 4598
described in division (B)(36)(a) of this section; and of equipment 4599
such as telephones, computers, facsimile machines, and similar 4600
tangible personal property primarily used to accept orders for 4601
direct marketing retail sales. 4602

(c) Sales of automatic food vending machines that preserve 4603
food with a shelf life of forty-five days or less by refrigeration 4604
and dispense it to the consumer. 4605

For purposes of division (B)(36) of this section, "direct 4606
marketing" means the method of selling where consumers order 4607
tangible personal property by United States mail, delivery 4608
service, or telecommunication and the vendor delivers or ships the 4609
tangible personal property sold to the consumer from a warehouse, 4610
catalogue distribution center, or similar fulfillment facility by 4611
means of the United States mail, delivery service, or common 4612
carrier. 4613

(37) Sales to a person engaged in the business of 4614
horticulture or producing livestock of materials to be 4615

incorporated into a horticulture structure or livestock structure;	4616
(38) The sale of a motor vehicle that is used exclusively for	4617
a vanpool ridesharing arrangement to persons participating in the	4618
vanpool ridesharing arrangement when the vendor is selling the	4619
vehicle pursuant to a contract between the vendor and the	4620
department of transportation;	4621
(39) Sales of personal computers, computer monitors, computer	4622
keyboards, modems, and other peripheral computer equipment to an	4623
individual who is licensed or certified to teach in an elementary	4624
or a secondary school in this state for use by that individual in	4625
preparation for teaching elementary or secondary school students;	4626
	4627
(40) Sales to a professional racing team of any of the	4628
following:	4629
(a) Motor racing vehicles;	4630
(b) Repair services for motor racing vehicles;	4631
(c) Items of property that are attached to or incorporated in	4632
motor racing vehicles, including engines, chassis, and all other	4633
components of the vehicles, and all spare, replacement, and	4634
rebuilt parts or components of the vehicles; except not including	4635
tires, consumable fluids, paint, and accessories consisting of	4636
instrumentation sensors and related items added to the vehicle to	4637
collect and transmit data by means of telemetry and other forms of	4638
communication.	4639
(41) Sales of used manufactured homes and used mobile homes,	4640
as defined in section 5739.0210 of the Revised Code, made on or	4641
after January 1, 2000;	4642
(42) Sales of tangible personal property and services to a	4643
provider of electricity used or consumed directly and primarily in	4644
generating, transmitting, or distributing electricity for use by	4645

others, including property that is or is to be incorporated into
and will become a part of the consumer's production, transmission,
or distribution system and that retains its classification as
tangible personal property after incorporation; fuel or power used
in the production, transmission, or distribution of electricity;
and tangible personal property and services used in the repair and
maintenance of the production, transmission, or distribution
system, including only those motor vehicles as are specially
designed and equipped for such use. The exemption provided in this
division shall be in lieu of all other exceptions in division
(E)(2) of section 5739.01 of the Revised Code to which a provider
of electricity may otherwise be entitled based on the use of the
tangible personal property or service purchased in generating,
transmitting, or distributing electricity.

For the purpose of the proper administration of this chapter,
and to prevent the evasion of the tax, it is presumed that all
sales made in this state are subject to the tax until the contrary
is established.

As used in this section, except in division (B)(16) of this
section, "food" includes cereals and cereal products, milk and
milk products including ice cream, meat and meat products, fish
and fish products, eggs and egg products, vegetables and vegetable
products, fruits, fruit products, and pure fruit juices,
condiments, sugar and sugar products, coffee and coffee
substitutes, tea, and cocoa and cocoa products. It does not
include: spirituous or malt liquors; soft drinks; sodas and
beverages that are ordinarily dispensed at bars and soda fountains
or in connection therewith, other than coffee, tea, and cocoa;
root beer and root beer extracts; malt and malt extracts; mineral
oils, cod liver oils, and halibut liver oil; medicines, including
tonics, vitamin preparations, and other products sold primarily
for their medicinal properties; and water, including mineral,

bottled, and carbonated waters, and ice. 4678

(C) The levy of an excise tax on transactions by which 4679
lodging by a hotel is or is to be furnished to transient guests 4680
pursuant to this section and division (B) of section 5739.01 of 4681
the Revised Code does not prevent any of the following: 4682

(1) A municipal corporation or township from levying an 4683
excise tax for any lawful purpose not to exceed three per cent on 4684
transactions by which lodging by a hotel is or is to be furnished 4685
to transient guests in addition to the tax levied by this section. 4686
If a municipal corporation or township repeals a tax imposed under 4687
division (C)(1) of this section and a county in which the 4688
municipal corporation or township has territory has a tax imposed 4689
under division (C) of section 5739.024 of the Revised Code in 4690
effect, the municipal corporation or township may not reimpose its 4691
tax as long as that county tax remains in effect. A municipal 4692
corporation or township in which a tax is levied under division 4693
(B)(2) of section 351.021 of the Revised Code may not increase the 4694
rate of its tax levied under division (C)(1) of this section to 4695
any rate that would cause the total taxes levied under both of 4696
those divisions to exceed three per cent on any lodging 4697
transaction within the municipal corporation or township. 4698

(2) A municipal corporation or a township from levying an 4699
additional excise tax not to exceed three per cent on such 4700
transactions pursuant to division (B) of section 5739.024 of the 4701
Revised Code. Such tax is in addition to any tax imposed under 4702
division (C)(1) of this section. 4703

(3) A county from levying an excise tax pursuant to division 4704
(A) of section 5739.024 of the Revised Code. 4705

(4) A county from levying an excise tax not to exceed three 4706
per cent of such transactions pursuant to division (C) of section 4707
5739.024 of the Revised Code. Such a tax is in addition to any tax 4708

imposed under division (C)(3) of this section. 4709

(5) A convention facilities authority, as defined in division 4710
(A) of section 351.01 of the Revised Code, from levying the excise 4711
taxes provided for in division (B) of section 351.021 of the 4712
Revised Code. 4713

(6) A county from levying an excise tax not to exceed one and 4714
one-half per cent of such transactions pursuant to division (D) of 4715
section 5739.024 of the Revised Code. Such tax is in addition to 4716
any tax imposed under division (C)(3) or (4) of this section. 4717
4718

(7) A county from levying an excise tax not to exceed one and 4719
one-half per cent of such transactions pursuant to division (E) of 4720
section 5739.024 of the Revised Code. Such a tax is in addition to 4721
any tax imposed under division (C)(3), (4), or (6) of this 4722
section. 4723

(D) The levy of this tax on retail sales of recreation and 4724
sports club service shall not prevent a municipal corporation from 4725
levying any tax on recreation and sports club dues or on any 4726
income generated by recreation and sports club dues. 4727

Sec. 5741.01. As used in this chapter: 4728

(A) "Person" includes individuals, receivers, assignees, 4729
trustees in bankruptcy, estates, firms, partnerships, 4730
associations, joint-stock companies, joint ventures, clubs, 4731
societies, corporations, business trusts, governments, and 4732
combinations of individuals of any form. 4733

(B) "Storage" means and includes any keeping or retention in 4734
this state for use or other consumption in this state. 4735

(C) "Use" means and includes the exercise of any right or 4736
power incidental to the ownership of the thing used. A thing is 4737
also "used" in this state if its consumer gives or otherwise 4738

distributes it, without charge, to recipients in this state. 4739

(D) "Purchase" means acquired or received for a 4740
consideration, whether such acquisition or receipt was effected by 4741
a transfer of title, or of possession, or of both, or a license to 4742
use or consume; whether such transfer was absolute or conditional, 4743
and by whatever means the transfer was effected; and whether the 4744
consideration was money, credit, barter, or exchange. Purchase 4745
includes production, even though the article produced was used, 4746
stored, or consumed by the producer. The transfer of copyrighted 4747
motion picture films for exhibition purposes is not a purchase, 4748
except such films as are used solely for advertising purposes. 4749
"Purchase" does not include the lease or rental of tangible 4750
personal property between members of an affiliated group, as 4751
defined in section 5739.01 of the Revised Code. 4752

(E) "Seller" means the person from whom a purchase is made, 4753
and includes every person engaged in this state or elsewhere in 4754
the business of selling tangible personal property or providing a 4755
service for storage, use, or other consumption or benefit in this 4756
state; and when, in the opinion of the tax commissioner, it is 4757
necessary for the efficient administration of this chapter, to 4758
regard any salesman, representative, peddler, or canvasser as the 4759
agent of a dealer, distributor, supervisor, or employer under whom 4760
~~he~~ the person operates, or from whom ~~he~~ the person obtains 4761
tangible personal property, sold by ~~him~~ the person for storage, 4762
use, or other consumption in this state, irrespective of whether 4763
or not ~~he~~ the person is making such sales on ~~his~~ the person's own 4764
behalf, or on behalf of such dealer, distributor, supervisor, or 4765
employer, the commissioner may regard ~~him~~ the person as such 4766
agent, and may regard such dealer, distributor, supervisor, or 4767
employer as the seller. "Seller" does not include any person to 4768
the extent the person provides a communications medium, such as, 4769
but not limited to, newspapers, magazines, radio, television, or 4770

cable television, by means of which sellers solicit purchases of 4771
their goods or services. 4772

(F) "Consumer" means any person who has purchased tangible 4773
personal property or has been provided a service for storage, use, 4774
or other consumption or benefit in this state. "Consumer" does not 4775
include a person who receives, without charge, tangible personal 4776
property or a service. 4777

A person who performs a facility management or similar 4778
service contract for a contractee is a consumer of all tangible 4779
personal property and services purchased for use in connection 4780
with the performance of such contract, regardless of whether title 4781
to any such property vests in the contractee. The purchase of such 4782
property and services is not subject to the exception for resale 4783
under division (E)(1) of section 5739.01 of the Revised Code. 4784

A member of an affiliated group, as defined in division (VV) 4786
of section 5739.01 of the Revised Code, that purchases tangible 4787
personal property for lease or rental to another member of the 4788
same affiliated group is the consumer of any property purchased 4789
for that lease or rental and is not entitled to claim a resale 4790
exception on that purchase. The consumer may claim any other 4791
exception or exemption that would be available to the other member 4792
of the affiliated group to whom the property is leased or rented 4793
if the other member had made the purchase of the property. 4794

(G)(1) "Price," except in the case of watercraft, outboard 4795
motors, or new motor vehicles, or where tangible personal property 4796
being stored, used, or consumed in this state is purchased by a 4797
member of an affiliated group from another member of the same 4798
affiliated group, means the aggregate value in money of anything 4799
paid or delivered, or promised to be paid or delivered, by a 4800
consumer to a seller in the complete performance of the 4801
transaction by which tangible personal property has been purchased 4802

or a service has been provided for storage, use, or other 4803
consumption or benefit in this state, without any deduction or 4804
exclusion on account of the cost of the property sold, cost of 4805
materials used, labor or service cost, interest, discount paid or 4806
allowed after the sale is consummated, or any other expense. If 4807
the transaction consists of the rental or lease of tangible 4808
personal property, "price" means the aggregate value in money of 4809
anything paid or delivered, or promised to be paid or delivered by 4810
the lessee to the lessor, in the complete performance of the 4811
rental or lease, without any deduction or exclusion of tax, 4812
interest, labor or service charge, damage liability waiver, 4813
termination or damage charge, discount paid or allowed after the 4814
lease is consummated, or any other expense. The tax shall be 4815
calculated and collected by the lessor on each payment made by the 4816
lessee. If a consumer produces the tangible personal property used 4817
by ~~him~~ the consumer, the price is the produced cost of such 4818
tangible personal property. The tax collected by the seller from 4819
the consumer under such sections is not a part of the price, but 4820
is a tax collection for the benefit of the state, and of counties 4821
levying an additional use tax pursuant to section 5741.021 or 4822
5741.023 of the Revised Code and of transit authorities levying an 4823
additional use tax pursuant to section 5741.022 of the Revised 4824
Code and, except for the discount authorized under section 5741.12 4825
of the Revised Code, no person other than the state or such a 4826
county or transit authority shall derive any benefit from the 4827
collection or payment of such tax. 4828

(2) In the case of watercraft, outboard motors, or new motor 4829
vehicles, "price" has the same meaning as in division (H) of 4830
section 5739.01 of the Revised Code. 4831

(3) In the case of a nonresident business consumer that 4832
purchases and uses tangible personal property outside this state 4833
and subsequently temporarily stores, uses, or otherwise consumes 4834

such tangible personal property in the conduct of business in this state, the consumer or the tax commissioner may determine the price based on the value of the temporary storage, use, or other consumption, in lieu of determining the price pursuant to division (G)(1) of this section. A price determination made by the consumer is subject to review and redetermination by the commissioner.

(4) In the case of tangible personal property held in this state as inventory for sale or lease, and that is temporarily stored, used, or otherwise consumed in a taxable manner, the price is the value of the temporary use. A price determination made by the consumer is subject to review and redetermination by the commissioner.

(5) In the case of tangible personal property originally purchased and used by the consumer outside this state, and that becomes permanently stored, used, or otherwise consumed in this state more than six months after its acquisition by the consumer, the consumer or the tax commissioner may determine the price based on the current value of such tangible personal property, in lieu of determining the price pursuant to division (G)(1) of this section. A price determination made by the consumer is subject to review and redetermination by the commissioner.

(6) In the case in which tangible personal property is stored, used, or consumed in this state by a person that is a member of an affiliated group, as defined in division (VV) of section 5739.01 of the Revised Code, that was purchased from another member of the same affiliated group, "price" has the same meaning as in division (H)(4) of section 5739.01 of the Revised Code.

(H) "Nexus with this state" means that the seller engages in continuous and widespread solicitation of purchases from residents of this state or otherwise purposefully directs its business

activities at residents of this state. 4867

(I) "Substantial nexus with this state" means that the seller 4868
has sufficient contact with this state, in accordance with Section 4869
8 of Article I of the Constitution of the United States, to allow 4870
the state to require the seller to collect and remit use tax on 4871
sales of tangible personal property or services made to consumers 4872
in this state. "Substantial nexus with this state" exists when the 4873
seller does any of the following: 4874

(1) Maintains a place of business within this state, whether 4875
operated by employees or agents of the seller, by a member of an 4876
affiliated group, as described in division (B)(3)(e) of section 4877
5739.01 of the Revised Code, of which the seller is a member, or 4878
by a franchisee using a trade name of the seller; 4879

(2) Regularly has employees, agents, representatives, 4880
solicitors, installers, repairmen, salesmen, or other individuals 4881
in this state for the purpose of conducting the business of the 4882
seller; 4883

(3) Uses a person in this state for the purpose of receiving 4884
or processing orders of the seller's goods or services; 4885

(4) Makes regular deliveries of tangible personal property 4886
into this state by means other than common carrier; 4887

(5) Has membership in an affiliated group, as described in 4888
division (B)(3)(e) of section 5739.01 of the Revised Code, at 4889
least one other member of which has substantial nexus with this 4890
state; 4891

(6) Owns tangible personal property that is rented or leased 4892
to a consumer in this state, or offers tangible personal property, 4893
on approval, to consumers in this state; 4894

(7) Is registered with the secretary of state to do business 4895
in this state or is registered or licensed by any state agency, 4896

board, or commission to transact business in this state or to make sales to persons in this state; 4897
4898

(8) Has any other contact with this state that would allow this state to require the seller to collect and remit use tax under Section 8 of Article I of the Constitution of the United States. 4899
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(J) "Fiscal officer" means, with respect to a regional transit authority, the secretary-treasurer thereof, and with respect to a county which is a transit authority, the fiscal officer of the county transit board appointed pursuant to section 306.03 of the Revised Code or, if the board of county commissioners operates the county transit system, the county auditor. 4903
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(K) "Territory of the transit authority" means all of the area included within the territorial boundaries of a transit authority as they from time to time exist. Such territorial boundaries must at all times include all the area of a single county or all the area of the most populous county which is a part of such transit authority. County population shall be measured by the most recent census taken by the United States census bureau. 4910
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(L) "Transit authority" means a regional transit authority created pursuant to section 306.31 of the Revised Code or a county in which a county transit system is created pursuant to section 306.01 of the Revised Code. For the purposes of this chapter, a transit authority must extend to at least the entire area of a single county. A transit authority which includes territory in more than one county must include all the area of the most populous county which is a part of such transit authority. County population shall be measured by the most recent census taken by the United States census bureau. 4917
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(M) "Providing a service" has the same meaning as in division 4927

(X) of section 5739.01 of the Revised Code. 4928

(N) "Other consumption" includes receiving the benefits of a 4929
service. 4930

Sec. 5743.05. All stamps provided for by section 5743.03 of 4931
the Revised Code, when procured by the tax commissioner, shall be 4932
immediately delivered to the treasurer of state, who shall execute 4933
a receipt therefor showing the number and aggregate face value of 4934
each denomination received by the treasurer of state and any other 4935
information that the commissioner requires to enforce the 4936
collection and distribution of all taxes imposed under section 4937
5743.024 or 5743.026 of the Revised Code, and deliver the receipt 4938
to the commissioner. The treasurer of state shall sell the stamps 4939
and, on the fifth day of each month, make a report showing all 4940
sales made during the preceding month, with the names of 4941
purchasers, the number of each denomination, the aggregate face 4942
value purchased by each, and any other information as the 4943
commissioner requires to enforce the collection and distribution 4944
of all taxes imposed under section 5743.024 of the Revised Code, 4945
and deliver it to the commissioner. The treasurer of state shall 4946
be accountable for all stamps received and unsold. The stamps 4947
shall be sold and accounted for at their face value, except the 4948
commissioner shall, by rule certified to the treasurer of state, 4949
authorize the sale of stamps and meter impressions to wholesale or 4950
retail dealers in this state, or to wholesale dealers outside this 4951
state, at a discount of not less than ~~three~~ one and ~~six-tenths~~ 4952
eight-tenths per cent or more than ten per cent of their face 4953
value, as a commission for affixing and canceling the stamps or 4954
meter impressions. 4955

The tax commissioner, by rule certified to the treasurer of 4956
state, shall authorize the delivery of stamps and meter 4957
impressions to wholesale and retail dealers in this state and to 4958

As Reported by the House Finance and Appropriations Committee

wholesale dealers outside this state on credit when the purchaser
files with the commissioner a bond to the state in the amount and
in the form prescribed by the commissioner, and with surety to the
satisfaction of the treasurer of state, conditioned on payment to
the treasurer of state within thirty days for stamps or meter
impressions delivered within that time. The tax commissioner shall
limit delivery of stamps and meter impressions on credit to the
period running from the first day of July of the fiscal year until
the first day of the following May. Any discount allowed as a
commission for affixing and canceling stamps or meter impressions
shall be allowed with respect to sales of stamps and meter
impressions on credit.

The treasurer of state shall redeem and pay for any
destroyed, unused, or spoiled tax stamps and any unused meter
impressions at their net value, and ~~he~~ shall refund to wholesale
dealers the net amount of state and county taxes paid erroneously
or paid on cigarettes which have been sold in interstate or
foreign commerce or which have become unsalable, and the net
amount of county taxes that were paid on cigarettes that have been
sold at retail or for retail sale outside a taxing county. An
application for a refund of tax shall be filed with the tax
commissioner, on the form prescribed by the commissioner for that
purpose, within three years from the date the tax stamps are
destroyed or spoiled, from the date of the erroneous payment, or
from the date that cigarettes on which taxes have been paid have
been sold in interstate or foreign commerce or have become
unsalable. On the filing of the application the commissioner shall
determine the amount of refund due payable from receipts of the
state tax, and, if applicable, payable from receipts of a county
tax and certify such amounts to the director of budget and
management and treasurer of state for payment from the tax refund
fund created by section 5703.052 of the Revised Code. When a

refund is granted for payment of an illegal or erroneous 4991
assessment issued by the department, the refund shall include 4992
interest on the amount of the refund from the date of the 4993
overpayment. The interest shall be computed at the rate per annum 4994
prescribed by section 5703.47 of the Revised Code. 4995

Sec. 5747.01. Except as otherwise expressly provided or 4996
clearly appearing from the context, any term used in this chapter 4997
has the same meaning as when used in a comparable context in the 4998
Internal Revenue Code, and all other statutes of the United States 4999
relating to federal income taxes. 5000

As used in this chapter: 5001

(A) "Adjusted gross income" or "Ohio adjusted gross income" 5002
means adjusted gross income as defined and used in the Internal 5003
Revenue Code, adjusted as provided in this section: 5004

(1) Add interest or dividends on obligations or securities of 5005
any state or of any political subdivision or authority of any 5006
state, other than this state and its subdivisions and authorities. 5007

(2) Add interest or dividends on obligations of any 5008
authority, commission, instrumentality, territory, or possession 5009
of the United States that are exempt from federal income taxes but 5010
not from state income taxes. 5011

(3) Deduct interest or dividends on obligations of the United 5012
States and its territories and possessions or of any authority, 5013
commission, or instrumentality of the United States to the extent 5014
included in federal adjusted gross income but exempt from state 5015
income taxes under the laws of the United States. 5016

(4) Deduct disability and survivor's benefits to the extent 5017
included in federal adjusted gross income. 5018

(5) Deduct benefits under Title II of the Social Security Act 5019
and tier 1 railroad retirement benefits to the extent included in 5020

federal adjusted gross income under section 86 of the Internal Revenue Code. 5021
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(6) Add For taxable years beginning before 2002 and taxable years beginning after 2003, add, in the case of a taxpayer who is a beneficiary of a trust that makes an accumulation distribution as defined in section 665 of the Internal Revenue Code, the portion, if any, of such distribution that does not exceed the undistributed net income of the trust for the three taxable years preceding the taxable year in which the distribution is made. 5023
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"Undistributed net income of a trust" means the taxable income of the trust increased by (a)(i) the additions to adjusted gross income required under division (A) of this section and (ii) the personal exemptions allowed to the trust pursuant to section 642(b) of the Internal Revenue Code, and decreased by (b)(i) the deductions to adjusted gross income required under division (A) of this section, (ii) the amount of federal income taxes attributable to such income, and (iii) the amount of taxable income that has been included in the adjusted gross income of a beneficiary by reason of a prior accumulation distribution. Any undistributed net income included in the adjusted gross income of a beneficiary shall reduce the undistributed net income of the trust commencing with the earliest years of the accumulation period. 5030
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(7) Deduct the amount of wages and salaries, if any, not otherwise allowable as a deduction but that would have been allowable as a deduction in computing federal adjusted gross income for the taxable year, had the targeted jobs credit allowed and determined under sections 38, 51, and 52 of the Internal Revenue Code not been in effect. 5043
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(8) Deduct any interest or interest equivalent on public obligations and purchase obligations to the extent included in federal adjusted gross income. 5049
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(9) Add any loss or deduct any gain resulting from the sale, 5052

exchange, or other disposition of public obligations to the extent 5053
included in federal adjusted gross income. 5054

(10) Deduct or add amounts, as provided under section 5747.70 5055
of the Revised Code, related to contributions to variable college 5056
savings program accounts made or tuition credits purchased 5057
pursuant to Chapter 3334. of the Revised Code. 5058

(11)(a) Deduct, to the extent not otherwise allowable as a 5059
deduction or exclusion in computing federal or Ohio adjusted gross 5060
income for the taxable year, the amount the taxpayer paid during 5061
the taxable year for medical care insurance and qualified 5062
long-term care insurance for the taxpayer, the taxpayer's spouse, 5063
and dependents. No deduction for medical care insurance under 5064
division (A)(11) of this section shall be allowed either to any 5065
taxpayer who is eligible to participate in any subsidized health 5066
plan maintained by any employer of the taxpayer or of the 5067
taxpayer's spouse, or to any taxpayer who is entitled to, or on 5068
application would be entitled to, benefits under part A of Title 5069
XVIII of the "Social Security Act," 49 Stat. 620 (1935), 42 U.S.C. 5070
301, as amended. For the purposes of division (A)(11)(a) of this 5071
section, "subsidized health plan" means a health plan for which 5072
the employer pays any portion of the plan's cost. The deduction 5073
allowed under division (A)(11)(a) of this section shall be the net 5074
of any related premium refunds, related premium reimbursements, or 5075
related insurance premium dividends received during the taxable 5076
year. 5077

(b) Deduct, to the extent not otherwise deducted or excluded 5078
in computing federal or Ohio adjusted gross income during the 5079
taxable year, the amount the taxpayer paid during the taxable 5080
year, not compensated for by any insurance or otherwise, for 5081
medical care of the taxpayer, the taxpayer's spouse, and 5082
dependents, to the extent the expenses exceed seven and one-half 5083
per cent of the taxpayer's federal adjusted gross income. 5084

(c) For purposes of division (A)(11) of this section, 5085
"medical care" has the meaning given in section 213 of the 5086
Internal Revenue Code, subject to the special rules, limitations, 5087
and exclusions set forth therein, and "qualified long-term care" 5088
has the same meaning given in section 7702(B)(b) of the Internal 5089
Revenue Code. 5090

(12)(a) Deduct any amount included in federal adjusted gross 5091
income solely because the amount represents a reimbursement or 5092
refund of expenses that in any year the taxpayer had deducted as 5093
an itemized deduction pursuant to section 63 of the Internal 5094
Revenue Code and applicable United States department of the 5095
treasury regulations. The deduction otherwise allowed under 5096
division (A)(12)(a) of this section shall be reduced to the extent 5097
the reimbursement is attributable to an amount the taxpayer 5098
deducted under this section in any taxable year. 5099

(b) Add any amount not otherwise included in Ohio adjusted 5100
gross income for any taxable year to the extent that the amount is 5101
attributable to the recovery during the taxable year of any amount 5102
deducted or excluded in computing federal or Ohio adjusted gross 5103
income in any taxable year. 5104

(13) Deduct any portion of the deduction described in section 5105
1341(a)(2) of the Internal Revenue Code, for repaying previously 5106
reported income received under a claim of right, that meets both 5107
of the following requirements: 5108

(a) It is allowable for repayment of an item that was 5109
included in the taxpayer's adjusted gross income for a prior 5110
taxable year and did not qualify for a credit under division (A) 5111
or (B) of section 5747.05 of the Revised Code for that year; 5112

(b) It does not otherwise reduce the taxpayer's adjusted 5113
gross income for the current or any other taxable year. 5114

(14) Deduct an amount equal to the deposits made to, and net 5115

investment earnings of, a medical savings account during the 5116
taxable year, in accordance with section 3924.66 of the Revised 5117
Code. The deduction allowed by division (A)(14) of this section 5118
does not apply to medical savings account deposits and earnings 5119
otherwise deducted or excluded for the current or any other 5120
taxable year from the taxpayer's federal adjusted gross income. 5121

(15)(a) Add an amount equal to the funds withdrawn from a 5122
medical savings account during the taxable year, and the net 5123
investment earnings on those funds, when the funds withdrawn were 5124
used for any purpose other than to reimburse an account holder 5125
for, or to pay, eligible medical expenses, in accordance with 5126
section 3924.66 of the Revised Code; 5127

(b) Add the amounts distributed from a medical savings 5128
account under division (A)(2) of section 3924.68 of the Revised 5129
Code during the taxable year. 5130

(16) Add any amount claimed as a credit under section 5131
5747.059 of the Revised Code to the extent that such amount 5132
satisfies either of the following: 5133

(a) The amount was deducted or excluded from the computation 5134
of the taxpayer's federal adjusted gross income as required to be 5135
reported for the taxpayer's taxable year under the Internal 5136
Revenue Code; 5137

(b) The amount resulted in a reduction of the taxpayer's 5138
federal adjusted gross income as required to be reported for any 5139
of the taxpayer's taxable years under the Internal Revenue Code. 5140

(17) Deduct the amount contributed by the taxpayer to an 5141
individual development account program established by a county 5142
department of job and family services pursuant to sections 329.11 5143
to 329.14 of the Revised Code for the purpose of matching funds 5144
deposited by program participants. On request of the tax 5145
commissioner, the taxpayer shall provide any information that, in 5146

the tax commissioner's opinion, is necessary to establish the 5147
amount deducted under division (A)(17) of this section. 5148

(18) Beginning in taxable year 2001, if the taxpayer is 5149
married and files a joint return and the combined federal adjusted 5150
gross income of the taxpayer and the taxpayer's spouse for the 5151
taxable year does not exceed one hundred thousand dollars, or if 5152
the taxpayer is single and has a federal adjusted gross income for 5153
the taxable year not exceeding fifty thousand dollars, deduct 5154
amounts paid during the taxable year for qualified tuition and 5155
fees paid to an eligible institution for the taxpayer, the 5156
taxpayer's spouse, or any dependent of the taxpayer, who is a 5157
resident of this state and is enrolled in or attending a program 5158
that culminates in a degree or diploma at an eligible institution. 5159
The deduction may be claimed only to the extent that qualified 5160
tuition and fees are not otherwise deducted or excluded for any 5161
taxable year from federal or Ohio adjusted gross income. The 5162
deduction may not be claimed for educational expenses for which 5163
the taxpayer claims a credit under section 5747.27 of the Revised 5164
Code. 5165

(19) Add any reimbursement received during the taxable year 5166
of any amount the taxpayer deducted under division (A)(18) of this 5167
section in any previous taxable year to the extent the amount is 5168
not otherwise included in Ohio adjusted gross income. 5169

(B) "Business income" means income arising from transactions, 5170
activities, and sources in the regular course of a trade or 5171
business and includes income from tangible and intangible property 5172
if the acquisition, rental, management, and disposition of the 5173
property constitute integral parts of the regular course of a 5174
trade or business operation. 5175

(C) "Nonbusiness income" means all income other than business 5176
income and may include, but is not limited to, compensation, rents 5177
and royalties from real or tangible personal property, capital 5178

gains, interest, dividends and distributions, patent or copyright royalties, or lottery winnings, prizes, and awards.	5179
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(D) "Compensation" means any form of remuneration paid to an employee for personal services.	5182
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(E) "Fiduciary" means a guardian, trustee, executor, administrator, receiver, conservator, or any other person acting in any fiduciary capacity for any individual, trust, or estate.	5184
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(F) "Fiscal year" means an accounting period of twelve months ending on the last day of any month other than December.	5187
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(G) "Individual" means any natural person.	5189
(H) "Internal Revenue Code" means the "Internal Revenue Code of 1986," 100 Stat. 2085, 26 U.S.C.A. 1, as amended.	5190
	5191
(I) "Resident" means:	5192
(1) An individual who is domiciled in this state, subject to section 5747.24 of the Revised Code;	5193
	5194
(2) The estate of a decedent who at the time of death was domiciled in this state. The domicile tests of section 5747.24 of the Revised Code and any election under section 5747.25 of the Revised Code are not controlling for purposes of division (I)(2) of this section.	5195
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<u>(3) A trust that is domiciled in this state. The domicile tests of section 5747.24 of the Revised Code and any election under section 5747.25 of the Revised Code are not controlling for purposes of division (I)(3) of this section.</u>	5200
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(J) "Nonresident" means an individual or estate that is not a resident. An individual who is a resident for only part of a taxable year is a nonresident for the remainder of that taxable year.	5204
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(K) "Pass-through entity" has the same meaning as in section	5208

5733.04 of the Revised Code.	5209
(L) "Return" means the notifications and reports required to be filed pursuant to this chapter for the purpose of reporting the tax due and includes declarations of estimated tax when so required.	5210 5211 5212 5213
(M) "Taxable year" means the calendar year or the taxpayer's fiscal year ending during the calendar year, or fractional part thereof, upon which the adjusted gross income is calculated pursuant to this chapter.	5214 5215 5216 5217
(N) "Taxpayer" means any person subject to the tax imposed by section 5747.02 of the Revised Code or any pass-through entity that makes the election under division (D) of section 5747.08 of the Revised Code.	5218 5219 5220 5221
(O) "Dependents" means dependents as defined in the Internal Revenue Code and as claimed in the taxpayer's federal income tax return for the taxable year or which the taxpayer would have been permitted to claim had the taxpayer filed a federal income tax return.	5222 5223 5224 5225 5226
(P) "Principal county of employment" means, in the case of a nonresident, the county within the state in which a taxpayer performs services for an employer or, if those services are performed in more than one county, the county in which the major portion of the services are performed.	5227 5228 5229 5230 5231
(Q) As used in sections 5747.50 to 5747.55 of the Revised Code:	5232 5233
(1) "Subdivision" means any county, municipal corporation, park district, or township.	5234 5235
(2) "Essential local government purposes" includes all functions that any subdivision is required by general law to exercise, including like functions that are exercised under a	5236 5237 5238

charter adopted pursuant to the Ohio Constitution.	5239
(R) "Overpayment" means any amount already paid that exceeds the figure determined to be the correct amount of the tax.	5240 5241
(S) "Taxable income" applies <u>only</u> to estates only <u>and trusts</u> and means taxable income as defined and used in the Internal Revenue Code adjusted as follows:	5242 5243 5244
(1) Add interest or dividends on obligations or securities of any state or of any political subdivision or authority of any state, other than this state and its subdivisions and authorities;	5245 5246 5247
(2) Add interest or dividends on obligations of any authority, commission, instrumentality, territory, or possession of the United States that are exempt from federal income taxes but not from state income taxes;	5248 5249 5250 5251
(3) Add the amount of personal exemption allowed to the estate pursuant to section 642(b) of the Internal Revenue Code;	5252 5253
(4) Deduct interest or dividends on obligations of the United States and its territories and possessions or of any authority, commission, or instrumentality of the United States that are exempt from state taxes under the laws of the United States;	5254 5255 5256 5257 5258
(5) Deduct the amount of wages and salaries, if any, not otherwise allowable as a deduction but that would have been allowable as a deduction in computing federal taxable income for the taxable year, had the targeted jobs credit allowed under sections 38, 51, and 52 of the Internal Revenue Code not been in effect;	5259 5260 5261 5262 5263 5264
(6) Deduct any interest or interest equivalent on public obligations and purchase obligations to the extent included in federal taxable income;	5265 5266 5267
(7) Add any loss or deduct any gain resulting from sale,	5268

exchange, or other disposition of public obligations to the extent 5269
included in federal taxable income; 5270

(8) Except in the case of the final return of an estate, add 5271
any amount deducted by the taxpayer on both its Ohio estate tax 5272
return pursuant to section 5731.14 of the Revised Code, and on its 5273
federal income tax return in determining either federal adjusted 5274
gross income or federal taxable income; 5275

(9)(a) Deduct any amount included in federal taxable income 5276
solely because the amount represents a reimbursement or refund of 5277
expenses that in a previous year the decedent had deducted as an 5278
itemized deduction pursuant to section 63 of the Internal Revenue 5279
Code and applicable treasury regulations. The deduction otherwise 5280
allowed under division (S)(9)(a) of this section shall be reduced 5281
to the extent the reimbursement is attributable to an amount the 5282
taxpayer or decedent deducted under this section in any taxable 5283
year. 5284

(b) Add any amount not otherwise included in Ohio taxable 5285
income for any taxable year to the extent that the amount is 5286
attributable to the recovery during the taxable year of any amount 5287
deducted or excluded in computing federal or Ohio taxable income 5288
in any taxable year. 5289

(10) Deduct any portion of the deduction described in section 5290
1341(a)(2) of the Internal Revenue Code, for repaying previously 5291
reported income received under a claim of right, that meets both 5292
of the following requirements: 5293

(a) It is allowable for repayment of an item that was 5294
included in the taxpayer's taxable income or the decedent's 5295
adjusted gross income for a prior taxable year and did not qualify 5296
for a credit under division (A) or (B) of section 5747.05 of the 5297
Revised Code for that year. 5298

(b) It does not otherwise reduce the taxpayer's taxable 5299

income or the decedent's adjusted gross income for the current or	5300
any other taxable year.	5301
(11) Add any amount claimed as a credit under section	5302
5747.059 of the Revised Code to the extent that the amount	5303
satisfies either of the following:	5304
(a) The amount was deducted or excluded from the computation	5305
of the taxpayer's federal taxable income as required to be	5306
reported for the taxpayer's taxable year under the Internal	5307
Revenue Code;	5308
(b) The amount resulted in a reduction in the taxpayer's	5309
federal taxable income as required to be reported for any of the	5310
taxpayer's taxable years under the Internal Revenue Code.	5311
(T) "School district income" and "school district income tax"	5312
have the same meanings as in section 5748.01 of the Revised Code.	5313
	5314
(U) As used in divisions (A)(8), (A)(9), (S)(6), and (S)(7)	5315
of this section, "public obligations," "purchase obligations," and	5316
"interest or interest equivalent" have the same meanings as in	5317
section 5709.76 of the Revised Code.	5318
(V) "Limited liability company" means any limited liability	5319
company formed under Chapter 1705. of the Revised Code or under	5320
the laws of any other state.	5321
(W) "Pass-through entity investor" means any person who,	5322
during any portion of a taxable year of a pass-through entity, is	5323
a partner, member, shareholder, or investor in that pass-through	5324
entity.	5325
(X) "Banking day" has the same meaning as in section 1304.01	5326
of the Revised Code.	5327
(Y) "Month" means a calendar month.	5328
(Z) "Quarter" means the first three months, the second three	5329

months, the third three months, or the last three months of the 5330
taxpayer's taxable year. 5331

(AA)(1) "Eligible institution" means a state university or 5332
state institution of higher education as defined in section 5333
3345.011 of the Revised Code, or a private, nonprofit college, 5334
university, or other post-secondary institution located in this 5335
state that possesses a certificate of authorization issued by the 5336
Ohio board of regents pursuant to Chapter 1713. of the Revised 5337
Code or a certificate of registration issued by the state board of 5338
proprietary school registration under Chapter 3332. of the Revised 5339
Code. 5340

(2) "Qualified tuition and fees" means tuition and fees 5341
imposed by an eligible institution as a condition of enrollment or 5342
attendance, not exceeding two thousand five hundred dollars in 5343
each of the individual's first two years of post-secondary 5344
education. If the individual is a part-time student, "qualified 5345
tuition and fees" includes tuition and fees paid for the academic 5346
equivalent of the first two years of post-secondary education 5347
during a maximum of five taxable years, not exceeding a total of 5348
five thousand dollars. "Qualified tuition and fees" does not 5349
include: 5350

(a) Expenses for any course or activity involving sports, 5351
games, or hobbies unless the course or activity is part of the 5352
individual's degree or diploma program; 5353

(b) The cost of books, room and board, student activity fees, 5354
athletic fees, insurance expenses, or other expenses unrelated to 5355
the individual's academic course of instruction; 5356

(c) Tuition, fees, or other expenses paid or reimbursed 5357
through an employer, scholarship, grant in aid, or other 5358
educational benefit program. 5359

(BB) Any term used in this chapter that is not otherwise 5360

defined in this section and that is not used in a comparable 5361
context in the Internal Revenue Code and other statutes of the 5362
United States relating to federal income taxes has the same 5363
meaning as in section 5733.40 of the Revised Code. 5364

Sec. 5747.02. (A) For the purpose of providing revenue for 5365
the support of schools and local government functions, to provide 5366
relief to property taxpayers, to provide revenue for the general 5367
revenue fund, and to meet the expenses of administering the tax 5368
levied by this chapter, there is hereby levied an annual tax. The 5369
tax is levied on every individual and every estate residing in or 5370
earning or receiving income in this state, on every individual and 5371
estate earning or receiving lottery winnings, prizes, or awards 5372
pursuant to Chapter 3770. of the Revised Code, and on every 5373
individual and estate otherwise having nexus with or in this state 5374
under the Constitution of the United States, ~~an annual tax. The~~ 5375
tax also is levied on every trust residing in or earning or 5376
receiving income in this state, earning or receiving such lottery 5377
winnings, prizes, or awards, or otherwise having nexus with or in 5378
this state under the Constitution of the United States for the 5379
trust's taxable years beginning in 2002 or 2003. The tax shall be 5380
measured in the case of individuals by adjusted gross income less 5381
an exemption for the taxpayer, the taxpayer's spouse, and each 5382
dependent as provided in section 5747.025 of the Revised Code, and 5383
measured in the case of trusts and estates by taxable income. ~~The~~ 5384
Except as provided in division (D) of this section, the tax 5385
imposed by this section on the balance thus obtained is hereby 5386
levied as follows: 5387

ADJUSTED GROSS INCOME LESS 5388

EXEMPTIONS (INDIVIDUALS)

OR 5389

TAXABLE INCOME 5390

(TRUSTS AND ESTATES) TAX 5391

\$5,000 or less	.743%	5392
More than \$5,000 but not more than \$10,000	\$37.15 plus 1.486% of the amount in excess of \$5,000	5393
More than \$10,000 but not more than \$15,000	\$111.45 plus 2.972% of the amount in excess of \$10,000	5394
More than \$15,000 but not more than \$20,000	\$260.05 plus 3.715% of the amount in excess of \$15,000	5395
More than \$20,000 but not more than \$40,000	\$445.80 plus 4.457% of the amount in excess of \$20,000	5396
More than \$40,000 but not more than \$80,000	\$1,337.20 plus 5.201% of the amount in excess of \$40,000	5397
More than \$80,000 but not more than \$100,000	\$3,417.60 plus 5.943% of the amount in excess of \$80,000	5398
More than \$100,000 but not more than \$200,000	\$4,606.20 plus 6.9% of the amount in excess of \$100,000	5399
More than \$200,000	\$11,506.20 plus 7.5% of the amount in excess of \$200,000	5400

(B) If the director of budget and management makes a certification to the tax commissioner under division (B) of section 131.44 of the Revised Code, the amount of tax as determined under division (A) of this section shall be reduced by the percentage prescribed in that certification for taxable years beginning in the calendar year in which that certification is made.

(C) The levy of this tax on income does not prevent a municipal corporation, a joint economic development zone created under section 715.691, or a joint economic development district created under section 715.70 or 715.71 or sections 715.72 to 715.81 of the Revised Code from levying a tax on income.

(D) The annual tax measured by taxable income of an electing small business trust is levied as follows:

(1) On the S corporation portion of the trust's taxable

income, at the highest rate set forth in division (A) of this 5416
section; 5417

(2) On the remaining portion of the trust's taxable income, 5418
at the rates set forth in division (A) of this section. The tax 5419
levied on the remaining portion described in division (D)(2) of 5420
this section applies only for the trust's taxable years beginning 5421
in 2002 or 2003. 5422

(E) For the purposes of this section, "trust" is limited to a 5423
trust described in Subchapter J of the Internal Revenue Code but 5424
does not include a trust exempt from tax under section 501(c)(3) 5425
of the Internal Revenue Code. 5426

Section 2. That existing sections 183.02, 1309.528, 5111.872, 5427
5123.043, 5123.046, 5123.048, 5123.049, 5123.0411, 5126.01, 5428
5126.02, 5126.021, 5126.033, 5126.035, 5126.036, 5126.042, 5429
5126.046, 5126.05, 5126.054, 5126.055, 5126.056, 5126.06, 5126.14, 5430
5126.15, 5126.17, 5126.18, 5126.19, 5126.221, 5126.357, 5705.44, 5431
5733.04, 5733.042, 5733.055, 5739.01, 5739.02, 5741.01, 5743.05, 5432
5747.01, and 5747.02 of the Revised Code are hereby repealed. 5433

Section 3. On the recommendation of the Director of Mental 5434
Retardation and Developmental Disabilities, the Director of Job 5435
and Family Services may seek one or more Medicaid waivers pursuant 5436
to section 5111.87 of the Revised Code including a waiver under 5437
which home and community-based services are provided in the form 5438
of family support services programs established by county boards 5439
of mental retardation and developmental disabilities under section 5440
5126.11 of the Revised Code. Notwithstanding division (A) of 5441
section 5111.873 of the Revised Code, the Director of Job and 5442
Family Services is not required to adopt rules under that section 5443
by the effective date of the waiver under which home and 5444
community-based services are provided in the form of family 5445

support services programs. 5446

Section 4. As used in this section, "Residential Facility 5447
Waiver transition" means the transition, due to the upcoming 5448
termination of the Residential Facility Waiver, of individuals who 5449
receive services under the Residential Facility Waiver to other 5450
home and community-based services as defined in section 5126.01 of 5451
the Revised Code. 5452

Consistent with the Medicaid redesign plan that the 5453
Department of Job and Family Services submitted to the Centers for 5454
Medicaid and Medicare Services to comply with an audit conducted 5455
by the centers, the Department of Mental Retardation and 5456
Developmental Disabilities shall develop a plan to implement the 5457
Residential Facilities Waiver transition. The plan shall identify 5458
how the needs of the individuals to be transferred are to be met, 5459
including ways that the Residential Facility Waiver's service 5460
capacity can be reconfigured on a statewide, regional, or county 5461
specific basis. The plan shall also specify the date, which shall 5462
not be later than September 1, 2002, that the moratorium 5463
established under Section 5 of this act is to terminate. The 5464
Department of Mental Retardation and Developmental Disabilities 5465
shall complete the plan in time for the Executive Branch Committee 5466
on Medicaid Redesign and Expansion MRDD Services, created by Am. 5467
Sub. H.B. 94 of the 124th General Assembly, to review the plan and 5468
submit recommended changes to the Department by May 31, 2002. The 5469
Committee shall finish its review and submit suggested changes to 5470
the Department of Mental Retardation and Developmental 5471
Disabilities not later than that date. Not later than sixty days 5472
after the Committee submits suggested changes to the Department, 5473
the Department and the Department of Job and Family Services shall 5474
establish protocols for county boards of mental retardation and 5475
developmental disabilities and private and government entities 5476
under contract with a county board to provide services under the 5477

Residential Facility Waiver to follow in implementing the plan. 5478

The Department of Mental Retardation and Developmental 5479
Disabilities shall identify costs associated with the plan 5480
developed under this section and sources of funding available to 5481
pay the costs. 5482

Not later than February 8, 2002, each county board of mental 5483
retardation and developmental disabilities that has a contract 5484
with one or more private or government entities to provide 5485
services under the Residential Facility Waiver shall jointly 5486
develop a plan with the providers for the implementation of the 5487
Residential Facility Waiver transition as concerns individuals who 5488
reside in a residential facility with a license capacity of five 5489
or fewer beds. The boards and providers shall develop the plan in 5490
accordance with a protocol the Departments of Job and Family 5491
Services and Mental Retardation and Developmental Disabilities 5492
shall jointly establish. 5493

Section 5. (A) Notwithstanding Chapter 5111. of the Revised 5494
Code, until the date specified in the plan that the Department of 5495
Mental Retardation and Developmental Disabilities develops under 5496
Section 4 of this act and except as provided in division (B) of 5497
this section, the number of intermediate care facility for the 5498
mentally retarded beds eligible for Medicaid payment shall not be 5499
higher than the number of such beds eligible for such payment on 5500
the effective date of this section. 5501

(B) The Department of Job and Family Services may issue one 5502
or more waivers of division (A) of this section in the event that 5503
an emergency, as determined by the Department, exists. In 5504
determining whether to issue a waiver, the Department of Job and 5505
Family Services shall consider the recommendation of the 5506
Department of Mental Retardation and Developmental Disabilities. 5507

Section 6. Notwithstanding Am. Sub. H.B. 94 of the 124th General Assembly, the Department of Mental Retardation and Developmental Disabilities shall not take action against a county board of mental retardation and developmental disabilities authorized by that act on the basis that the county board submitted the last component of the plan required by section 5126.054 of the Revised Code after November 1, 2001. The Department shall take action against the county board under division (B) of section 5126.056 of the Revised Code if the county board fails to submit that component to the Department by July 1, 2002.

Section 7. (A) The Joint Council on Mental Retardation and Developmental Disabilities created under section 101.37 of the Revised Code shall do both of the following in meetings open to the public:

(1) Do all of the following regarding the tax equity program:

(a) Review documents submitted by the Ohio Superintendents of County Boards of Mental Retardation and Developmental Disabilities and Ohio Association of County Boards of Mental Retardation and Developmental Disabilities to the House Finance and Appropriations Committee and Senate Finance and Financial Institutions Committee regarding the issue of a property tax equalization program for adults only as provided by Am. Sub. H.B. 94 of the 124th General Assembly;

(b) Review the concept of Medicaid comparability of care, adult services expenditures within county boards of mental retardation and developmental disabilities, the concept of tax capacity and targeting property taxes to adult services, and the necessity to reduce the disparity in capability of county boards

to provide adult services;	5538
(c) Establish a reasonable methodology to provide tax equalization for adult services for county boards that are below the average on property tax yield.	5539 5540 5541
(2) Do both of the following regarding the collective bargaining unit of service and support administrators:	5542 5543
(a) Review the provision of section 5126.15 of the Revised Code that prohibits individuals employed or under contract as service and support administrators from being in the same collective bargaining unit as employees who perform duties that are not administrative;	5544 5545 5546 5547 5548
(b) Determine whether the following service and support administration functions are in conflict or incompatible with the functions of employees who perform duties that are not administrative:	5549 5550 5551 5552
(i) Selection of providers of day services, including employees of county boards of mental retardation and developmental disabilities;	5553 5554 5555
(ii) Contracting with applicable providers;	5556
(iii) Reviewing and assuring the quality of services;	5557
(iv) Monitoring for major unusual incidents.	5558
(B) The Council shall prepare a report on its responsibilities under division (A) of this section. The report shall include the Council's findings and recommended actions. The Council shall submit the report to the Speaker of the House of Representatives, Senate President, and Governor not later than February 1, 2002.	5559 5560 5561 5562 5563 5564
Section 8. Notwithstanding sections 5126.16 to 5126.18 of the Revised Code and Section 75.02 of Am. Sub. H.B. 94 of the 124th	5565 5566

General Assembly, the Department of Mental Retardation and 5567
Developmental Disabilities shall do both of the following: 5568

(A) Use \$6,500,000 in fiscal year 2002 and \$13,000,000 in 5569
fiscal year 2003 of the appropriation item 322-501, County Boards 5570
Subsidies, in Section 75.02 of Am. Sub. H.B. 94 of the 124th 5571
General Assembly, to fund the tax equalization program in 5572
accordance with the law governing the program as revised by the 5573
General Assembly following the Joint Council on Mental Retardation 5574
and Developmental Disabilities' submission of the report required 5575
by this act regarding the tax equity program; 5576

(B) Make payments under the tax equity program for fiscal 5577
year 2002 after the General Assembly revises the law governing the 5578
program following the Council's submission of the report rather 5579
than on or before September 30, 2001. 5580

Section 9. That Sections 63.25, 74.01, 74.02, 104, and 140 of 5581
Am. Sub. H.B. 94 of the 124th General Assembly be amended to read 5582
as follows: 5583

"Sec. 63.25. REFUND OF SETS PENALTY 5584

The Department of Job and Family Services shall ~~notify the~~ 5585
~~Controlling Board immediately on receipt of deposit~~ any refunds 5586
for penalties that were paid directly or indirectly by the state 5587
for the Support Enforcement Tracking System (SETS). ~~Any and all~~ 5588
~~refunds received for such penalties shall be deposited in their~~ 5589
~~entirety to the General Revenue Fund 3V6, TANF Block Grant.~~ 5590

Sec. 74.01. DIVISION OF MENTAL HEALTH - HOSPITALS 5591

General Revenue Fund 5592

GRF 334-408 Community and Hospital \$ 356,469,071 \$ 352,719,838 5593

Mental Health Services

As Reported by the House Finance and Appropriations Committee

		<u>359,469,071</u>	<u>372,719,838</u>	5594
GRF 334-506	Court Costs	\$ 958,791	\$ 976,652	5595
TOTAL GRF	General Revenue Fund	\$ 357,427,862	\$ 353,696,490	5596
		<u>360,427,862</u>	<u>373,696,490</u>	5597
General Services Fund Group				5598
149 334-609	Hospital Rotary - Operating Expenses	\$ 10,451,492	\$ 10,451,492	5599
150 334-620	Special Education	\$ 152,500	\$ 152,500	5600
TOTAL GSF	General Services Fund Group	\$ 10,603,992	\$ 10,603,992	5601 5602
Federal Special Revenue Fund Group				5603
3A8 334-613	Federal Letter of Credit	\$ 9,000	\$ 0	5604
3B0 334-617	Elementary and Secondary Education Act	\$ 202,774	\$ 214,340	5605
3B1 334-635	Hospital Medicaid Expansion	\$ 2,000,000	\$ 2,000,000	5606
324 334-605	Medicaid/Medicare	\$ 8,791,748	\$ 9,043,700	5607
5L2 334-619	Health Foundation/Greater Cincinnati	\$ 131,600	\$ 94,869	5608
TOTAL FED	Federal Special Revenue Fund Group	\$ 11,135,122	\$ 11,352,909	5609 5610
State Special Revenue Fund Group				5611
485 334-632	Mental Health Operating	\$ 1,991,448	\$ 1,989,912	5612
692 334-636	Community Mental Health Board Risk Fund	\$ 361,323	\$ 370,356	5613
TOTAL SSR	State Special Revenue Fund Group	\$ 2,352,771	\$ 2,360,268	5614 5615
TOTAL ALL BUDGET FUND GROUPS		\$ 381,519,747	\$ 378,013,659	5616

		<u>384,519,747</u>	<u>398,013,659</u>	5617
	<u>COMMUNITY AND HOSPITAL MENTAL HEALTH SERVICES</u>			5618
	<u>Of the foregoing appropriation item 334-408, Community and</u>			5619
	<u>Hospital Mental Health Services, the appropriation increases made</u>			5620
	<u>by the amendment in H.B. 405 of the 124th General Assembly shall</u>			5621
	<u>be used by the state mental hospitals for operating purposes.</u>			5622
	COMMUNITY MENTAL HEALTH BOARD RISK FUND			5623
	The foregoing appropriation item 334-636, Community Mental			5624
	Health Board Risk Fund, shall be used to make payments pursuant to			5625
	section 5119.62 of the Revised Code.			5626
	Sec. 74.02. DIVISION OF MENTAL HEALTH - COMMUNITY SUPPORT			5627
	SERVICES			5628
	General Revenue Fund			5629
GRF 335-419	Community Medication	\$ 7,682,295	\$ 7,701,549	5630
	Subsidy			
GRF 335-502	Community Mental	\$ 38,166,674	\$ 38,166,674	5631
	Health Programs			
GRF 335-508	Services for Severely	\$ 60,405,135	\$ 60,905,135	5632
	Mentally Disabled			
TOTAL GRF	General Revenue Fund	\$ 106,254,104	\$ 106,773,358	5633
	General Services Fund Group			5634
4N8 335-606	Family Stability	\$ 7,460,600	\$ 7,647,115	5635
	Incentive			
4P9 335-604	Community Mental	\$ 200,000	\$ 200,000	5636
	Health Projects			
TOTAL GSF	General Services			5637
	Fund Group	\$ 7,660,600	\$ 7,847,115	5638
	Federal Special Revenue Fund Group			5639
3A7 335-612	Social Services Block	\$ 9,314,108	\$ 9,314,108	5640
	Grant			

As Reported by the House Finance and Appropriations Committee

3A8	335-613	Federal Grant - Community Mental Health Board Subsidy	\$	960,000	\$	960,000	5641
3A9	335-614	Mental Health Block Grant	\$	12,754,654	\$	12,737,654	5642
3B1	335-635	Community Medicaid Expansion	\$	157,480,000	\$	165,355,000	5643
State Special Revenue Fund Group							5644
632	335-616	Community Capital Replacement	\$	250,000	\$	250,000	5645
TOTAL SSR	State Special Revenue	Fund Group	\$	250,000	\$	250,000	5646
TOTAL FED Federal Special Revenue Fund Group							5647
			\$	180,508,762	\$	188,366,762	5648
TOTAL ALL BUDGET FUND GROUPS			\$	294,673,466	\$	303,237,235	5649
DEPARTMENT TOTAL							5650
GENERAL REVENUE FUND							5651
			\$	515,555,079	\$	513,832,559	5651
				<u>518,555,079</u>		<u>533,832,559</u>	5652
DEPARTMENT TOTAL							5653
GENERAL SERVICES FUND GROUP							5654
			\$	20,278,415	\$	20,489,025	5654
DEPARTMENT TOTAL							5655
FEDERAL SPECIAL REVENUE							5656
FUND GROUP							5657
			\$	199,327,157	\$	206,370,154	5657
DEPARTMENT TOTAL							5658
STATE SPECIAL REVENUE FUND GROUP							5659
			\$	6,493,130	\$	5,572,886	5659
DEPARTMENT TOTAL							5660
INTRAGOVERNMENTAL FUND GROUP							5661
			\$	76,095,310	\$	78,181,973	5661
TOTAL DEPARTMENT OF MENTAL HEALTH							5662
			\$	817,749,091	\$	824,446,597	5662
				<u>820,749,091</u>		<u>844,446,597</u>	5663
 Sec. 104. SOS SECRETARY OF STATE							5665
General Revenue Fund							5666
GRF	050-321	Operating Expenses	\$	3,300,000	\$	3,300,000	5667

As Reported by the House Finance and Appropriations Committee

GRF 050-403	Election Statistics	\$	146,963	\$	154,882	5668
GRF 050-407	Pollworkers Training	\$	231,400	\$	327,600	5669
GRF 050-409	Litigation	\$	26,210	\$	27,622	5670
Expenditures						
TOTAL GRF	General Revenue Fund	\$	3,704,573	\$	3,810,104	5671
General Services Fund Group						
4S8 050-610	Board of Voting	\$	7,200	\$	7,200	5673
Machine Examiners						
412 050-607	Notary Commission	\$	166,284	\$	171,273	5674
413 050-601	Information Systems	\$	153,300	\$	157,133	5675
414 050-602	Citizen Education Fund	\$	80,000	\$	70,000	5676
TOTAL General Services	Fund Group	\$	406,784	\$	405,606	5677
State Special Revenue Fund Group						
5N9 050-607	Technology	\$	120,000	\$	121,000	5679
Improvements						
599 050-603	Business Services	\$	11,880,000	\$	11,979,000	5680
Operating Expenses						
			<u>12,100,000</u>		<u>12,208,000</u>	5681
TOTAL SSR	State Special Revenue					5682
Fund Group		\$	12,000,000	\$	12,100,000	5683
			<u>12,220,000</u>		<u>12,329,000</u>	5684
Holding Account Redistribution Fund Group						
R01 050-605	Uniform Commercial	\$	65,000	\$	65,000	5686
Code Refunds						
R02 050-606	Corporate/Business	\$	185,000	\$	185,000	5687
Filing Refunds						
TOTAL 090	Holding Account					5688
Redistribution	Fund Group	\$	250,000	\$	250,000	5689
TOTAL ALL BUDGET	FUND GROUPS	\$	16,361,357	\$	16,565,710	5690
			<u>16,581,357</u>		<u>16,794,710</u>	5691
BOARD OF VOTING MACHINE EXAMINERS						
						5692
	The foregoing appropriation item 050-610, Board of Voting					5693

Machine Examiners, shall be used to pay for the services and 5694
expenses of the members of the Board of Voting Machine Examiners, 5695
and for other expenses that are authorized to be paid from the 5696
Board of Voting Machine Examiners Fund, which is created in 5697
section 3506.05 of the Revised Code. Moneys not used shall be 5698
returned to the person or entity submitting the equipment for 5699
examination. If it is determined that additional appropriations 5700
are necessary, such amounts are appropriated. 5701

HOLDING ACCOUNT REDISTRIBUTION GROUP 5702

The foregoing appropriation items 050-605 and 050-606, 5703
Holding Account Redistribution Fund Group, shall be used to hold 5704
revenues until they are directed to the appropriate accounts or 5705
until they are refunded. If it is determined that additional 5706
appropriations are necessary, such amounts are appropriated. 5707

Sec. 140. TEMPORARY STABILIZATION OF LOCAL GOVERNMENT 5708
DISTRIBUTIONS 5709

(A) On or before the third day of each month of the period 5710
July 2001 through May 2002, the Tax Commissioner shall determine 5711
the amounts credited under sections 5727.45, 5733.12, 5739.21, 5712
5741.03, and 5747.03 of the Revised Code, respectively, to the 5713
Local Government Fund, to the Library and Local Government Support 5714
Fund, and to the Local Government Revenue Assistance Fund in the 5715
twelfth preceding month. On or before June 3, 2002, the Tax 5716
Commissioner shall determine the amounts credited under sections 5717
5727.45, 5733.12, 5739.21, 5741.03, and 5747.03 of the Revised 5718
Code, respectively, to the Local Government Fund, to the Library 5719
and Local Government Support Fund, and to the Local Government 5720
Revenue Assistance Fund in June 2000. For purposes of this 5721
section, any amount transferred during the period January 1, 2001, 5722
through June 30, 2001 to the Local Government Fund, to the Local 5723
Government Revenue Assistance Fund, or to the Library and Local 5724

Government Support Fund under section 131.44 of the Revised Code 5725
shall be considered to be an amount credited to that respective 5726
fund under section 5747.03 of the Revised Code. 5727

Notwithstanding sections 5727.45, 5733.12, 5739.21, 5741.03, 5728
and 5747.03 of the Revised Code to the contrary, for each month in 5729
the period July 1, 2001, through June 30, 2003, from the public 5730
utility excise, corporate franchise, sales, use, and personal 5731
income taxes collected: 5732

(1) An amount shall first be credited to the Local Government 5733
Fund that equals the amount credited to that fund from that tax 5734
according to the schedule in division (B) of this section. 5735

(2) An amount shall next be credited to the Local Government 5736
Revenue Assistance Fund that equals the amount credited to that 5737
fund from that tax according to the schedule in division (B) of 5738
this section. 5739

(3) An amount shall next be credited to the Library and Local 5740
Government Support Fund that equals the amount credited to that 5741
fund from that tax according to the schedule in division (B) of 5742
this section. 5743

(B) The amounts shall be credited from each tax to each 5744
respective fund as follows: 5745

(1) In July 2001 and July 2002, the amounts credited in July 5746
2000; 5747

(2) In August 2001 and August 2002, the amounts credited in 5748
August 2000; 5749

(3) In September 2001 and September 2002, the amounts 5750
credited in September 2000; 5751

(4) In October 2001 and October 2002, the amounts credited in 5752
October 2000; 5753

(5) In November 2001 and November 2002, the amounts credited 5754

in November 2000;	5755
(6) In December 2001 and December 2002, the amounts credited in December 2000;	5756 5757
(7) In January 2002 and January 2003, the amounts credited in January 2001;	5758 5759
(8) In February 2002 and February 2003, the amounts credited in February 2001;	5760 5761
(9) In March 2002 and March 2003, the amounts credited in March 2001;	5762 5763
(10) In April 2002 and April 2003, the amounts credited in April 2001;	5764 5765
(11) In May 2002 and May 2003, the amounts credited in May 2001;	5766 5767
(12) In June 2002 and June 2003, the amounts credited in June 2000.	5768 5769
(C) Notwithstanding section 5727.84 of the Revised Code to the contrary, for the period July 1, 2001, through June 30, 2003, no amounts shall be credited to the Local Government Fund or to the Local Government Revenue Assistance Fund from the kilowatt hour tax, and such amounts that would have otherwise been required to be credited to such funds shall instead be credited to the General Revenue Fund. Notwithstanding section 131.44 of the Revised Code to the contrary, for the period July 1, 2001, through June 30, 2003, no amounts shall be transferred to the Local Government Fund, the Local Government Revenue Assistance Fund, or the Library and Local Government Support Fund from the Income Tax Reduction Fund, and such amounts that would have otherwise been transferred to such funds from the Income Tax Reduction Fund shall instead be transferred to the General Revenue Fund.	5770 5771 5772 5773 5774 5775 5776 5777 5778 5779 5780 5781 5782 5783
<u>(D) Notwithstanding any other provision of law to the</u>	5784

contrary, the Tax Commissioner shall do each of the following: 5785

(1) By the fourth day of February 2002, the commissioner shall subtract the amount calculated in division (D)(1)(b) of this section from the amount calculated in division (D)(1)(a) of this section. If the amount in division (D)(1)(a) of this section is greater than the amount in division (D)(1)(b) of this section, then subtract the difference from the amount of money from the income tax credited to the Local Government Fund, the Local Government Revenue Assistance Fund, and the Library and Local Government Support Fund in February 2002. 5786
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(a) Money credited to the Local Government Fund, the Local Government Revenue Assistance Fund, and the Library and Local Government Support Fund from July 2001 through January 2002, less each fund's proportional share of \$64,092,000. 5795
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(b) The amount of money that would have been credited to the Local Government Fund, the Local Government Revenue Assistance Fund, and the Library and Local Government Support Fund from July 2001 through January 2002, if sections 5727.45, 5733.12, 5739.21, 5741.03, and 5747.03 of the Revised Code were in effect during this period. 5799
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(2) By the fourth day of June 2002, the commissioner shall subtract the amount calculated in division (D)(2)(b) of this section from the amount calculated in division (D)(2)(a) of this section. If the amount in division (D)(1)(a) of this section is greater than the amount in division (D)(1)(b) of this section, then subtract any positive difference from the amount of money from the income tax credited to the Local Government Fund, the Local Government Revenue Assistance Fund, and the Library and Local Government Support Fund in June 2002. 5805
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(a) Money credited to the Local Government Fund, the Local Government Revenue Assistance Fund, and the Library and Local 5814
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Government Support Fund from February 2002 through May 2002, plus 5816
any money subtracted under division (D)(1) of this section. 5817

(b) The amount of money that would have been credited to the 5818
Local Government Fund, the Local Government Revenue Assistance 5819
Fund, and the Library and Local Government Support Fund from 5820
February 2002 through May 2002 if sections 5727.45, 5733.12, 5821
5739.21, 5741.03, and 5747.03 of the Revised Code were in effect 5822
during this period. 5823

(3) By the fourth day of February 2003, the commissioner 5824
shall subtract the amount calculated in division (D)(1)(b) of this 5825
section from the amount calculated in division (D)(1)(a) of this 5826
section. If the amount in division (D)(1)(a) of this section is 5827
greater than the amount in division (D)(1)(b) of this section, 5828
then subtract the difference from the amount of money from the 5829
income tax credited to the Local Government Fund, the Local 5830
Government Revenue Assistance Fund, and the Library and Local 5831
Government Support Fund in February 2003. 5832

(a) Money credited to the Local Government Fund, the Local 5833
Government Revenue Assistance Fund, and the Library and Local 5834
Government Support Fund from June 2002 through January 2003, less 5835
each fund's proportional share of \$64,092,000, plus the amount 5836
subtracted under division (D)(2) of this section. 5837

(b) The amount of money that would have been credited to the 5838
Local Government Fund, the Local Government Revenue Assistance 5839
Fund, and the Library and Local Government Support Fund from June 5840
2002 through January 2003, if sections 5727.45, 5733.12, 5739.21, 5841
5741.03, and 5747.03 of the Revised Code were in effect during 5842
this period. 5843

(4) By the fourth day of June 2003, the commissioner shall 5844
subtract the amount calculated in division (D)(2)(b) of this 5845
section from the amount calculated in division (D)(2)(a) of this 5846

section. If the amount in division (D)(1)(a) of this section is 5847
greater than the amount in division (D)(1)(b) of this section, 5848
then subtract any positive difference from the amount of money 5849
from the income tax credited to the Local Government Fund, the 5850
Local Government Revenue Assistance Fund, and the Library and 5851
Local Government Support Fund in June 2003. 5852

(a) Money credited to the Local Government Fund, the Local 5853
Government Revenue Assistance Fund, and the Library and Local 5854
Government Support Fund from February 2003 through May 2003, plus 5855
any money subtracted under division (D)(3) of this section. 5856

(b) The amount of money that would have been credited to the 5857
Local Government Fund, the Local Government Revenue Assistance 5858
Fund, and the Library and Local Government Support Fund from 5859
February 2003 through May 2003, if sections 5727.45, 5733.12, 5860
5739.21, 5741.03, and 5747.03 of the Revised Code were in effect 5861
during this period. 5862

Notwithstanding any other provision of law to the contrary, 5863
the Tax Commissioner shall compute separate adjustments to the 5864
amounts credited from the public utility excise, corporate 5865
franchise, sales, use, and personal income taxes to the Local 5866
Government Fund, the Local Government Revenue Assistance Fund, and 5867
the Library and Local Government Support Fund during July 2001. 5868
The adjustments shall equal the amount credited to each respective 5869
fund from each respective tax during June 2000 minus the amount 5870
credited to that fund from that tax during June 2001. If an 5871
adjustment is a positive amount, during July 2001, such amount 5872
shall be credited to the Local Government Fund, the Local 5873
Government Revenue Assistance Fund, or the Library and Local 5874
Government Support Fund, as appropriate, and shall be deducted 5875
from the General Revenue Fund. If an adjustment is a negative 5876
amount, during July 2001, such amount shall be deducted from the 5877
Local Government Fund, the Local Government Revenue Assistance 5878

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Fund, or the Library and Local Government Support Fund, as 5879
appropriate, and shall be credited to the General Revenue Fund. 5880
Any amount remaining in the Local Government Fund, the Local 5881
Government Revenue Assistance Fund, or the Library and Local 5882
Government Support Fund after the distributions from such funds 5883
are made to local governments in August 2001, shall be certified 5884
by the Tax Commissioner to the Director of Budget and Management 5885
by August 15, 2001, and the Director of Budget and Management 5886
shall transfer such amount from each respective fund to the 5887
General Revenue Fund by August 31, 2001. 5888

For purposes of this section, "pro rata share" means the 5889
percentage calculated for each county and used in each month of 5890
the period July 2000 through June 2001 to distribute the amounts 5891
credited to the Library and Local Government Support Fund in 5892
accordance with section 5747.47 of the Revised Code. 5893

Notwithstanding any other provision of law to the contrary, 5894
in July 2001, each county undivided library and local government 5895
support fund shall receive from the Library and Local Government 5896
Support Fund an amount equal to the amount it would have received 5897
pursuant to section 5747.47 of the Revised Code for that month, 5898
minus its pro rata share of any amount that has been or shall be 5899
transferred from the Library and Local Government Support Fund to 5900
the OPLIN Technology Fund in that month. In August 2001, each 5901
county undivided library and local government support fund shall 5902
receive from the Library and Local Government Support Fund an 5903
amount equal to the amount it received from that fund in July 2000 5904
and August 2000 minus the amount it received from that fund in 5905
July 2001 and minus its pro rata share of any amount transferred 5906
from that fund to the OPLIN Technology Fund in July 2001 or August 5907
2001. In August 2001, each county undivided local government fund 5908
shall receive from the Local Government Fund, each municipality 5909
that receives a distribution directly from the Local Government 5910

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Fund shall receive from that fund, and each county undivided local government revenue assistance fund shall receive from the Local Government Revenue Assistance Fund an amount equal to the amount it received from that respective fund in July 2000 and August 2000 minus the amount it received from that respective fund in July 2001. In each month of the periods September 1, 2001, through June 30, 2002, and September 1, 2002, through June 30, 2003, each county undivided local government fund shall receive from the Local Government Fund, each municipality that receives a distribution directly from the Local Government Fund shall receive from that fund, each county undivided local government revenue assistance fund shall receive from the Local Government Revenue Assistance Fund, and each county undivided library and local government support fund shall receive from the Library and Local Government Support Fund, the same amount it received from that respective fund in the corresponding month of the period September 1, 2000, through June 2001. In each month of the period July 1, 2002, through August 31, 2002, and in the month of July 2003, each county undivided local government fund shall receive from the Local Government Fund, each municipality that receives a distribution directly from the Local Government Fund shall receive from that fund, each county undivided local government revenue assistance fund shall receive from the Local Government Revenue Assistance Fund, and each county undivided library and local government support fund shall receive from the Library and Local Government Support Fund, the same amount it received from that respective fund in the corresponding month of the period July 1, 2000, through August 31, 2000. If during any month of the period September 1, 2001, through July 31, 2003, a transfer is made from the Library and Local Government Support Fund to the OPLIN Technology Fund, the amount distributed to each county undivided library and local government support fund shall be reduced by its pro rata share of the amount transferred.

During the period July 1, 2001, through July 31, 2003, the 5944
Director of Budget and Management shall issue those directives to 5945
state agencies that are necessary to ensure that the appropriate 5946
amounts are distributed to the Local Government Fund, to the Local 5947
Government Revenue Assistance Fund, and to the Library and Local 5948
Government Support Fund to accomplish the purposes of this 5949
section." 5950

Section 10. That existing Sections 63.25, 74.01, 74.02, 104, 5951
and 140 of Am. Sub. H.B. 94 of the 124th General Assembly are 5952
hereby repealed. 5953

Section 11. That Section 41.10 of Am. Sub. H.B. 94 of the 5954
124th General Assembly, as amended by Am. Sub. H.B. 299 of the 5955
124th General Assembly, be amended to read as follows: 5956

"Sec. 41.10. EMERGENCY SHELTER HOUSING GRANTS 5957

(A) As used in this section, "emergency shelter housing" 5958
means a structure suitable for the temporary housing of the 5959
homeless and the provision of, or referral to, supportive 5960
services. Shelters that restrict admission to victims of domestic 5961
violence, runaways, or alcohol or substance abusers shall not be 5962
considered emergency shelter housing. 5963

(B) The foregoing appropriation item 195-440, Emergency 5964
Shelter Housing Grants, shall be used by the Office of Housing and 5965
Community Partnerships in the Department of Development to make 5966
grants to private, nonprofit organizations to provide emergency 5967
shelter housing for the homeless. The department shall distribute 5968
the grants pursuant to rules adopted by the Director of 5969
Development. The director may amend or rescind the rules and may 5970
adopt other rules necessary to implement this section. In awarding 5971
grants, the department shall give preference to organizations 5972

applying to fund existing emergency shelter housing. 5973

The department shall notify each organization that applied 5974
for a grant under this section of the amount of its grant award, 5975
if any. To receive a grant, the organization shall provide 5976
matching funds equal to 50 per cent of the total grant it was 5977
awarded. The organization shall expend its grant for shelter 5978
operations and supportive services, which include employment 5979
assistance, case management, information and referral services, 5980
transportation, and clothing. In providing employment assistance, 5981
the organization shall, at a minimum, refer persons to the 5982
Department of Job and Family Services. 5983

LOW AND MODERATE INCOME HOUSING 5984

The Director of Budget and Management, after consulting with 5985
the Director of Development, shall transfer up to \$19,000,000 from 5986
appropriation item 195-441, Low and Moderate Income Housing, to 5987
appropriation item 195-638, Low and Moderate Income Housing Trust 5988
Fund. This transfer shall be made via an intrastate transfer 5989
voucher. 5990

UTILITY BILL CREDIT 5991

The foregoing appropriation item 195-505, Utility Bill 5992
Credits, shall be used to provide utility and fuel assistance to 5993
eligible low-income Ohio households with elderly and disabled 5994
members. 5995

TANF HOUSING PROGRAM 5996

There is hereby established the TANF Housing Program to be 5997
administered by the Department of Development in accordance with 5998
an interagency agreement entered into with the Department of Job 5999
and Family Services under section 5101.801 of the Revised Code. 6000
The program shall provide benefits and services to TANF eligible 6001
individuals under a Title IV-A program pursuant to the 6002
requirements of section 5101.801 of the Revised Code. 6003

The foregoing appropriation item 195-619, TANF Housing Program, shall be used to provide supportive services for low-income families related to housing or homelessness, including housing counseling; to provide grants to nonprofit organizations to assist Title IV-A eligible families with incomes at or below 200 per cent of the federal poverty guidelines with down-payment assistance for homeownership or down-payment assistance toward the purchase of mobile homes, to provide emergency home repair funding for Title IV-A eligible families with incomes at or below 200 per cent of the federal poverty guidelines; to provide operating support for family emergency shelter programs; and to provide emergency rent and mortgage assistance for families with incomes at or below 200 per cent of the federal poverty guidelines. The funds shall not be used to match federal funds.

To the extent practicable and in order to prevent duplication of the provision of assistance, the Department of Development shall require applicants for these funds to provide evidence of collaboration with other county governmental entities, including, when appropriate, county job and family services departments.

The Department of Job and Family Services shall transfer into the TANF Housing Fund (3X3) of the Department of Development, which is hereby created, funds necessary to reimburse allowable TANF Housing Program expenditures as reported by the Department of Development. The transfer of funds shall be made by intrastate transfer vouchers processed against appropriation item 600-689, TANF Block Grant, of the Department of Job and Family Services and shall not exceed ~~\$5,200,000 in fiscal year 2002 and \$6,500,000 in fiscal year 2003~~ \$11,700,000 for the biennium. Encumbrances shall be allowed and maintained for agreements meeting provisions of this section and shall be maintained for a period not to exceed federal provisions for use of TANF Block Grant funds that have been committed for any federal TANF Block Grant year for services

that are not considered to be "assistance" as defined in 45 C.F.R. 6036
260.31(a). 6037

No more than five per cent of the transferred funds may be 6038
used by the Department of Development for the administrative 6039
expenses of this program. 6040

The benefits and services provided under the TANF Housing 6041
Program shall not be "assistance" as defined in 45 C.F.R. 6042
260.31(a), and shall be benefits and services that 45 C.F.R. 6043
260.31(b) excludes from the definition of assistance. 6044

As used in this section, "federal poverty guideline" means 6045
the poverty guideline as defined by the United States Office of 6046
Management and Budget and revised by the United States Secretary 6047
of Health and Human Services in accordance with section 673 of the 6048
"Community Services Block Grant Act," 95 Stat. 511 (1981), 42 6049
U.S.C.A. 9902, as amended." 6050

Section 12. That existing Section 41.10 of Am. Sub. H.B. 94 6051
of the 124th General Assembly, as amended by Am. Sub. H.B. 299 of 6052
the 124th General Assembly, is hereby repealed. 6053

Section 13. That Section 10 of Am. Sub. S.B. 192 of the 123rd 6054
General Assembly be amended to read as follows: 6055

"Sec. 10. ~~Sections Section 8 and 9 of this act~~ Am. Sub. S.B. 6056
192 of the 123rd General Assembly shall remain in full force and 6057
effect commencing on July 1, 2000, and terminating on June 30, 6058
2002, for the purpose of drawing money from the state treasury in 6059
payment of liabilities lawfully incurred thereunder, and on June 6060
30, 2002, and not before, the moneys appropriated thereby shall 6061
lapse into the funds from which they are severally appropriated. 6062

The appropriations made in ~~Sections Section 8 and 9 of this~~ 6063
~~act~~ Am. Sub. S.B. 192 of the 123rd General Assembly are subject to 6064

all provisions of the capital appropriations bill governing the 2000-2002 biennium that are generally applicable to such appropriations. Expenditures from appropriations contained in ~~Sections~~ Section 8 ~~and 9~~ shall be accounted for as though made in the capital appropriations bill governing the 2000-2002 biennium." 6065
6066
6067
6068
6069

Section 14. That existing Section 10 of Am. Sub. S.B. 192 of the 123rd General Assembly is hereby repealed. 6070
6071

Section 15. That Section 9 of Am. Sub. S.B. 192 of the 123rd General Assembly, as amended by Am. Sub. H.B. 94 of the 124th General Assembly, be amended to read as follows: 6072
6073
6074

~~"Sec. 9. All items set forth in this section are hereby appropriated out of any moneys in the state treasury to the credit of the Law Enforcement Improvements Trust Fund (Fund J87) that are not otherwise appropriated.~~ 6075
6076
6077
6078

Appropriations

AGO ATTORNEY GENERAL 6079

Tobacco Master Settlement Agreement Fund Group 6080

~~CAP-716 Lab and Training 6081~~
~~Facility Improvements~~

J87 055-635 Law Enforcement \$ 0 \$ 5,200,000 6082
Technology, Training,
and Facility
Enhancements

TOTAL ~~Attorney General~~ TSF Tobacco \$ 0 \$ 5,200,000 6083

Master Settlement Agreement Fund
Group

TOTAL ~~Law Enforcement Improvements~~ \$ 0 \$ 5,200,000 6084

~~Trust Fund~~ ALL BUDGET FUND GROUPS

LAW ENFORCEMENT IMPROVEMENTS TRUST FUND 6085

The foregoing appropriation item 055-635, Law Enforcement Technology, Training, and Facility Enhancements shall be used in accordance with section 183.10 of the Revised Code."

Section 16. That existing Section 9 of Am. Sub. S.B. 192 of the 123rd General Assembly, as amended by Am. Sub. H.B. 94 of the 124th General Assembly, is hereby repealed.

Section 17. On January 26 and 27, 2002, no tax on retail sales imposed or authorized by Chapter 5739. of the Revised Code or on use, storage, or consumption imposed or authorized by Chapter 5741. of the Revised Code shall apply to sales of tangible personal property for personal, nonbusiness use other than food to be consumed on the premises, motor vehicles as defined in section 4501.01 of the Revised Code, and watercraft.

The Tax Commissioner, in accordance with section 5703.14 of the Revised Code, shall adopt rules necessary to implement the exemption authorized by this section, and shall make available to vendors informational bulletins explaining the exemption.

Section 18. Section 5733.042 of the Revised Code, as amended by this act, first applies in tax year 2003.

Section 19. BUDGET STABILIZATION FUND TRANSFERS

Notwithstanding section 131.43 and division (D) of section 127.14 of the Revised Code, if the Director of Budget and Management determines that revenues to the General Revenue Fund in fiscal years 2002 and 2003 are insufficient to cover agency appropriations for fiscal years 2002 and 2003, the Director of Budget and Management may, with Controlling Board approval, transfer up to \$279 million over the biennium from the Budget Stabilization Fund to the General Revenue Fund.

Section 20. TRANSFER FROM THE TOBACCO MASTER SETTLEMENT 6114
AGREEMENT FUND TO THE GENERAL REVENUE FUND 6115

Notwithstanding section 183.02 of the Revised Code, on or 6116
before June 30, 2002, the Director of Budget and Management may 6117
transfer up to \$120,000,000 from the Tobacco Master Settlement 6118
Agreement Fund (Fund 087) to the General Revenue Fund. 6119

Notwithstanding section 183.02 of the Revised Code, on or 6120
before June 30, 2003, the Director of Budget and Management may 6121
transfer up to \$120,000,000 from the Tobacco Master Settlement 6122
Agreement Fund (Fund 087) to the General Revenue Fund. 6123

Of the tobacco revenue that is credited to the Tobacco Master 6124
Settlement Agreement Fund in fiscal year 2002 and in fiscal year 6125
2003, the share that is determined pursuant to section 183.02 of 6126
the Revised Code to be the amount to be transferred by the 6127
Director of Budget and Management from the Tobacco Master 6128
Settlement Agreement Fund to the Tobacco Use Prevention and 6129
Cessation Trust Fund shall be reduced by the amount that is 6130
transferred from the Tobacco Master Settlement Agreement Fund to 6131
the General Revenue Fund in accordance with this section. 6132

Section 21. APPROPRIATION REDUCTIONS 6133

The General Revenue Fund appropriations contained in Am. Sub. 6134
H.B. 94 of the 124th General Assembly are hereby reduced by six 6135
per cent for each fiscal year of the 2002-2003 biennium for the 6136
following agencies: the Ohio House of Representatives; the Ohio 6137
Senate; the Joint Committee on Agency Rule Review; and the Joint 6138
Legislative Ethics Committee. 6139

Section 22. The General Assembly encourages the Administrator 6140
of Workers' Compensation, notwithstanding sections 4123.35 and 6141
4123.40 of the Revised Code, to apply a seventy-five percent 6142

premium credit for employers, except self-insuring employers, for 6143
the period when employer premiums are next due. 6144

Section 23. Section 1309.401 (1309.528) of the Revised Code 6145
is presented in this act as a composite of the section as amended 6146
by Am. Sub. H.B. 94 and as amended and renumbered by Am. Sub. S.B. 6147
74, both of the 124th General Assembly. Section 5733.05 of the 6148
Revised Code is presented in this act as a composite of the 6149
section as amended by both Am. Sub. H.B. 283 and Am. Sub. S.B. 3 6150
of the 123rd General Assembly. Section 5739.02 of the Revised Code 6151
is presented in this act as a composite of the section as amended 6152
by both Am. Sub. H.B. 94 and Sub. H.B. 117 of the 124th General 6153
Assembly. The General Assembly, applying the principle stated in 6154
division (B) of section 1.52 of the Revised Code that amendments 6155
are to be harmonized if reasonably capable of simultaneous 6156
operation, finds that the composites are the resulting versions of 6157
the sections in effect prior to the effective date of the sections 6158
as presented in this act. 6159

Section 24. The codified and uncodified sections of law 6160
amended or enacted by this act, and the items of law of which such 6161
sections are composed, are not subject to the referendum. 6162
Therefore, under Ohio Constitution, Article II, Section 1d and 6163
section 1.471 of the Revised Code, the sections as amended or 6164
enacted by this act, and the items of law of which such sections 6165
are composed, are entitled to go into immediate effect when this 6166
act becomes law. 6167