

(C) Cost of ownership payments to intermediate care facilities for the mentally retarded with more than eight beds shall not exceed the following limits:	39594 39595 39596
(1) For facilities with dates of licensure prior to January 1, 1958, not exceeding two dollars and fifty cents per patient day;	39597 39598 39599
(2) For facilities with dates of licensure after December 31, 1957, but prior to January 1, 1968, not exceeding:	39600 39601
(a) Three dollars and fifty cents per patient day if the cost of construction was three thousand five hundred dollars or more per bed;	39602 39603 39604
(b) Two dollars and fifty cents per patient day if the cost of construction was less than three thousand five hundred dollars per bed.	39605 39606 39607
(3) For facilities with dates of licensure after December 31, 1967, but prior to January 1, 1976, not exceeding:	39608 39609
(a) Four dollars and fifty cents per patient day if the cost of construction was five thousand one hundred fifty dollars or more per bed;	39610 39611 39612
(b) Three dollars and fifty cents per patient day if the cost of construction was less than five thousand one hundred fifty dollars per bed, but exceeds three thousand five hundred dollars per bed;	39613 39614 39615 39616
(c) Two dollars and fifty cents per patient day if the cost of construction was three thousand five hundred dollars or less per bed.	39617 39618 39619
(4) For facilities with dates of licensure after December 31, 1975, but prior to January 1, 1979, not exceeding:	39620 39621
(a) Five dollars and fifty cents per patient day if the cost of construction was six thousand eight hundred dollars or more per	39622 39623

bed;	39624
(b) Four dollars and fifty cents per patient day if the cost	39625
of construction was less than six thousand eight hundred dollars	39626
per bed but exceeds five thousand one hundred fifty dollars per	39627
bed;	39628
(c) Three dollars and fifty cents per patient day if the cost	39629
of construction was five thousand one hundred fifty dollars or	39630
less per bed, but exceeds three thousand five hundred dollars per	39631
bed;	39632
(d) Two dollars and fifty cents per patient day if the cost	39633
of construction was three thousand five hundred dollars or less	39634
per bed.	39635
(5) For facilities with dates of licensure after December 31,	39636
1978, but prior to January 1, 1980, not exceeding:	39637
(a) Six dollars per patient day if the cost of construction	39638
was seven thousand six hundred twenty-five dollars or more per	39639
bed;	39640
(b) Five dollars and fifty cents per patient day if the cost	39641
of construction was less than seven thousand six hundred	39642
twenty-five dollars per bed but exceeds six thousand eight hundred	39643
dollars per bed;	39644
(c) Four dollars and fifty cents per patient day if the cost	39645
of construction was six thousand eight hundred dollars or less per	39646
bed but exceeds five thousand one hundred fifty dollars per bed;	39647
(d) Three dollars and fifty cents per patient day if the cost	39648
of construction was five thousand one hundred fifty dollars or	39649
less but exceeds three thousand five hundred dollars per bed;	39650
(e) Two dollars and fifty cents per patient day if the cost	39651
of construction was three thousand five hundred dollars or less	39652
per bed.	39653

(6) For facilities with dates of licensure after December 31, 1979, but prior to January 1, 1981, not exceeding:	39654 39655
(a) Twelve dollars per patient day if the beds were originally licensed as residential facility beds by the department of mental retardation and developmental disabilities;	39656 39657 39658
(b) Six dollars per patient day if the beds were originally licensed as nursing home beds by the department of health.	39659 39660
(7) For facilities with dates of licensure after December 31, 1980, but prior to January 1, 1982, not exceeding:	39661 39662
(a) Twelve dollars per patient day if the beds were originally licensed as residential facility beds by the department of mental retardation and developmental disabilities;	39663 39664 39665
(b) Six dollars and forty-five cents per patient day if the beds were originally licensed as nursing home beds by the department of health.	39666 39667 39668
(8) For facilities with dates of licensure after December 31, 1981, but prior to January 1, 1983, not exceeding:	39669 39670
(a) Twelve dollars per patient day if the beds were originally licensed as residential facility beds by the department of mental retardation and developmental disabilities;	39671 39672 39673
(b) Six dollars and seventy-nine cents per patient day if the beds were originally licensed as nursing home beds by the department of health.	39674 39675 39676
(9) For facilities with dates of licensure after December 31, 1982, but prior to January 1, 1984, not exceeding:	39677 39678
(a) Twelve dollars per patient day if the beds were originally licensed as residential facility beds by the department of mental retardation and developmental disabilities;	39679 39680 39681
(b) Seven dollars and nine cents per patient day if the beds	39682

were originally licensed as nursing home beds by the department of health. 39683
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(10) For facilities with dates of licensure after December 31, 1983, but prior to January 1, 1985, not exceeding: 39685
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(a) Twelve dollars and twenty-four cents per patient day if the beds were originally licensed as residential facility beds by the department of mental retardation and developmental disabilities; 39687
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(b) Seven dollars and twenty-three cents per patient day if the beds were originally licensed as nursing home beds by the department of health. 39691
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(11) For facilities with dates of licensure after December 31, 1984, but prior to January 1, 1986, not exceeding: 39694
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(a) Twelve dollars and fifty-three cents per patient day if the beds were originally licensed as residential facility beds by the department of mental retardation and developmental disabilities; 39696
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(b) Seven dollars and forty cents per patient day if the beds were originally licensed as nursing home beds by the department of health. 39700
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(12) For facilities with dates of licensure after December 31, 1985, but prior to January 1, 1987, not exceeding: 39703
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(a) Twelve dollars and seventy cents per patient day if the beds were originally licensed as residential facility beds by the department of mental retardation and developmental disabilities; 39705
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(b) Seven dollars and fifty cents per patient day if the beds were originally licensed as nursing home beds by the department of health. 39708
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(13) For facilities with dates of licensure after December 31, 1986, but prior to January 1, 1988, not exceeding: 39711
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(a) Twelve dollars and ninety-nine cents per patient day if	39713
the beds were originally licensed as residential facility beds by	39714
the department of mental retardation and developmental	39715
disabilities;	39716
(b) Seven dollars and sixty-seven cents per patient day if	39717
the beds were originally licensed as nursing home beds by the	39718
department of health.	39719
(14) For facilities with dates of licensure after December	39720
31, 1987, but prior to January 1, 1989, not exceeding thirteen	39721
dollars and twenty-six cents per patient day;	39722
(15) For facilities with dates of licensure after December	39723
31, 1988, but prior to January 1, 1990, not exceeding thirteen	39724
dollars and forty-six cents per patient day;	39725
(16) For facilities with dates of licensure after December	39726
31, 1989, but prior to January 1, 1991, not exceeding thirteen	39727
dollars and sixty cents per patient day;	39728
(17) For facilities with dates of licensure after December	39729
31, 1990, but prior to January 1, 1992, not exceeding thirteen	39730
dollars and forty-nine cents per patient day;	39731
(18) For facilities with dates of licensure after December	39732
31, 1991, but prior to January 1, 1993, not exceeding thirteen	39733
dollars and sixty-seven cents per patient day;	39734
(19) For facilities with dates of licensure after December	39735
31, 1992, not exceeding fourteen dollars and twenty-eight cents	39736
per patient day.	39737
(D) Beginning January 1, 1981, regardless of the original	39738
date of licensure, the department of job and family services shall	39739
pay a rate for the per diem capitalized costs of renovations to	39740
intermediate care facilities for the mentally retarded made after	39741
January 1, 1981, not exceeding six dollars per patient day using	39742

1980 as the base year and adjusting the amount annually until June 30, 1993, for fluctuations in construction costs calculated by the department using the "Dodge building cost indexes, northeastern and north central states," published by Marshall and Swift. The payment provided for in this division is the only payment that shall be made for the capitalized costs of a nonextensive renovation of an intermediate care facility for the mentally retarded. Nonextensive renovation costs shall not be included in cost of ownership, and a nonextensive renovation shall not affect the date of licensure for purposes of division (C) of this section. This division applies to nonextensive renovations regardless of whether they are made by an owner or a lessee. If the tenancy of a lessee that has made renovations ends before the depreciation expense for the renovation costs has been fully reported, the former lessee shall not report the undepreciated balance as an expense.

For a nonextensive renovation to qualify for payment under this division, both of the following conditions must be met:

(1) At least five years have elapsed since the date of licensure or date of an extensive renovation of the portion of the facility that is proposed to be renovated, except that this condition does not apply if the renovation is necessary to meet the requirements of federal, state, or local statutes, ordinances, rules, or policies.

(2) The provider has obtained prior approval from the department of job and family services. The provider shall submit a plan that describes in detail the changes in capital assets to be accomplished by means of the renovation and the timetable for completing the project. The time for completion of the project shall be no more than eighteen months after the renovation begins. The director of job and family services shall adopt rules in accordance with Chapter 119. of the Revised Code that specify

criteria and procedures for prior approval of renovation projects. 39775
No provider shall separate a project with the intent to evade the 39776
characterization of the project as a renovation or as an extensive 39777
renovation. No provider shall increase the scope of a project 39778
after it is approved by the department of job and family services 39779
unless the increase in scope is approved by the department. 39780

(E) The amounts specified in divisions (C) and (D) of this 39781
section shall be adjusted beginning July 1, 1993, for the 39782
estimated inflation for the twelve-month period beginning on the 39783
first day of July of the calendar year preceding the calendar year 39784
that precedes the fiscal year for which rate will be paid and 39785
ending on the thirtieth day of the following June, using the 39786
consumer price index for shelter costs for all urban consumers for 39787
the north central region, as published by the United States bureau 39788
of labor statistics. 39789

(F)(1) For facilities of eight or fewer beds that have dates 39790
of licensure or have been granted project authorization by the 39791
department of mental retardation and developmental disabilities 39792
before July 1, 1993, and for facilities of eight or fewer beds 39793
that have dates of licensure or have been granted project 39794
authorization after that date if the facilities demonstrate that 39795
they made substantial commitments of funds on or before that date, 39796
cost of ownership shall not exceed eighteen dollars and thirty 39797
cents per resident per day. The eighteen-dollar and thirty-cent 39798
amount shall be increased by the change in the "Dodge building 39799
cost indexes, northeastern and north central states," published by 39800
Marshall and Swift, during the period beginning June 30, 1990, and 39801
ending July 1, 1993, and by the change in the consumer price index 39802
for shelter costs for all urban consumers for the north central 39803
region, as published by the United States bureau of labor 39804
statistics, annually thereafter. 39805

(2) For facilities with eight or fewer beds that have dates 39806

of licensure or have been granted project authorization by the 39807
department of mental retardation and developmental disabilities on 39808
or after July 1, 1993, for which substantial commitments of funds 39809
were not made before that date, cost of ownership payments shall 39810
not exceed the applicable amount calculated under division (F)(1) 39811
of this section, if the department of job and family services 39812
gives prior approval for construction of the facility. If the 39813
department does not give prior approval, cost of ownership 39814
payments shall not exceed the amount specified in division (C) of 39815
this section. 39816

(3) Notwithstanding divisions (D) and (F)(1) and (2) of this 39817
section, the total payment for cost of ownership, cost of 39818
ownership efficiency incentive, and capitalized costs of 39819
renovations for an intermediate care facility for the mentally 39820
retarded with eight or fewer beds shall not exceed the sum of the 39821
limitations specified in divisions (C) and (D) of this section. 39822

(G) Notwithstanding any provision of this section or section 39823
5111.24 of the Revised Code, the director of job and family 39824
services may adopt rules in accordance with Chapter 119. of the 39825
Revised Code that provide for a calculation of a combined maximum 39826
payment limit for indirect care costs and cost of ownership for 39827
intermediate care facilities for the mentally retarded with eight 39828
or fewer beds. 39829

(H) After June 30, 1980, the owner of an intermediate care 39830
facility for the mentally retarded operating under a provider 39831
agreement shall provide written notice to the department of job 39832
and family services at least forty-five days prior to entering 39833
into any contract of sale for the facility or voluntarily 39834
terminating participation in the medical assistance program. After 39835
the date on which a transaction of sale is closed, the owner shall 39836
refund to the department the amount of excess depreciation paid to 39837
the facility by the department for each year the owner has 39838

operated the facility under a provider agreement and prorated 39839
according to the number of medicaid patient days for which the 39840
facility has received payment. If an intermediate care facility 39841
for the mentally retarded is sold after five or fewer years of 39842
operation under a provider agreement, the refund to the department 39843
shall be equal to the excess depreciation paid to the facility. If 39844
an intermediate care facility for the mentally retarded is sold 39845
after more than five years but less than ten years of operation 39846
under a provider agreement, the refund to the department shall 39847
equal the excess depreciation paid to the facility multiplied by 39848
twenty per cent, multiplied by the number of years less than ten 39849
that a facility was operated under a provider agreement. If an 39850
intermediate care facility for the mentally retarded is sold after 39851
ten or more years of operation under a provider agreement, the 39852
owner shall not refund any excess depreciation to the department. 39853
For the purposes of this division, "depreciation paid to the 39854
facility" means the amount paid to the intermediate care facility 39855
for the mentally retarded for cost of ownership pursuant to this 39856
section less any amount paid for interest costs. For the purposes 39857
of this division, "excess depreciation" is the intermediate care 39858
facility for the mentally retarded's depreciated basis, which is 39859
the owner's cost less accumulated depreciation, subtracted from 39860
the purchase price but not exceeding the amount of depreciation 39861
paid to the facility. 39862

A cost report shall be filed with the department within 39863
ninety days after the date on which the transaction of sale is 39864
closed or participation is voluntarily terminated for an 39865
intermediate care facility for the mentally retarded subject to 39866
this division. The report shall show the accumulated depreciation, 39867
the sales price, and other information required by the department. 39868
The department shall provide for a bank, trust company, or savings 39869
and loan association to hold in escrow the amount of the last two 39870

monthly payments to an intermediate care facility for the mentally 39871
retarded made pursuant to division (A)(1) of section 5111.22 of 39872
the Revised Code before a sale or voluntary termination of 39873
participation ~~shall be held in escrow by a bank, trust company, or~~ 39874
~~savings and loan association, except that if or, if the owner~~ 39875
fails, within the time required by this division, to notify the 39876
department before entering into a contract of sale for the 39877
facility, the amount of the first two monthly payments made to the 39878
facility after the department learns of the contract, regardless 39879
of whether a new owner is in possession of the facility. If the 39880
amount the owner will be required to refund under this section is 39881
likely to be less than the amount of the ~~last~~ two monthly payments 39882
otherwise put into escrow under this division, the department 39883
shall take one of the following actions instead of withholding the 39884
amount of the ~~last~~ two monthly payments: 39885

(1) In the case of an owner that owns other facilities that 39887
participate in the medical assistance program, obtain a promissory 39888
note in an amount sufficient to cover the amount likely to be 39889
refunded; 39890

(2) In the case of all other owners, withhold the amount of 39891
the last monthly payment to the intermediate care facility for the 39892
mentally retarded or, if the owner fails, within the time required 39893
by this division, to notify the department before entering into a 39894
contract of sale for the facility, the amount of the first monthly 39895
payment made to the facility after the department learns of the 39896
contract, regardless of whether a new owner is in possession of 39897
the facility. 39898

The department shall, within ninety days following the filing 39899
of the cost report, audit the report and issue an audit report to 39900
the owner. The department also may audit any other cost reports 39901
for the facility that have been filed during the previous three 39902

years. In the audit report, the department shall state its
findings and the amount of any money owed to the department by the
intermediate care facility for the mentally retarded. The findings
shall be subject to an adjudication conducted in accordance with
Chapter 119. of the Revised Code. No later than fifteen days after
the owner agrees to a settlement, any funds held in escrow less
any amounts due to the department shall be released to the owner
and amounts due to the department shall be paid to the department.
If the amounts in escrow are less than the amounts due to the
department, the balance shall be paid to the department within
fifteen days after the owner agrees to a settlement. If the
department does not issue its audit report within the ninety-day
period, the department shall release any money held in escrow to
the owner. For the purposes of this section, a transfer of
corporate stock, the merger of one corporation into another, or a
consolidation does not constitute a sale.

If an intermediate care facility for the mentally retarded is
not sold or its participation is not terminated after notice is
provided to the department under this division, the department
shall order any payments held in escrow released to the facility
upon receiving written notice from the owner that there will be no
sale or termination of participation. After written notice is
received from an intermediate care facility for the mentally
retarded that a sale or termination of participation will not take
place, the facility shall provide notice to the department at
least forty-five days prior to entering into any contract of sale
or terminating participation at any future time.

(I) The department of job and family services shall pay each
eligible proprietary intermediate care facility for the mentally
retarded a return on the facility's net equity computed at the
rate of one and one-half times the average of interest rates on

special issues of public debt obligations issued to the federal 39935
hospital insurance trust fund for the cost reporting period. No 39936
facility's return on net equity paid under this division shall 39937
exceed one dollar per patient day. 39938

In calculating the rate for return on net equity, the 39939
department shall use the greater of the facility's inpatient days 39940
during the applicable cost reporting period or the number of 39941
inpatient days the facility would have had during that period if 39942
its occupancy rate had been ninety-five per cent. 39943

(J)(1) Except as provided in division (J)(2) of this section, 39944
if a provider leases or transfers an interest in a facility to 39945
another provider who is a related party, the related party's 39946
allowable cost of ownership shall include the lesser of the 39947
following: 39948

(a) The annual lease expense or actual cost of ownership, 39949
whichever is applicable; 39950

(b) The reasonable cost to the lessor or provider making the 39951
transfer. 39952

(2) If a provider leases or transfers an interest in a 39953
facility to another provider who is a related party, regardless of 39954
the date of the lease or transfer, the related party's allowable 39955
cost of ownership shall include the annual lease expense or actual 39956
cost of ownership, whichever is applicable, subject to the 39957
limitations specified in divisions (B) to (I) of this section, if 39958
all of the following conditions are met: 39959

(a) The related party is a relative of owner; 39960

(b) In the case of a lease, if the lessor retains any 39961
ownership interest, it is, except as provided in division 39962
(J)(2)(d)(ii) of this section, in only the real property and any 39963
improvements on the real property; 39964

(c) In the case of a transfer, the provider making the 39965
transfer retains, except as provided in division (J)(2)(d)(iv) of 39966
this section, no ownership interest in the facility; 39967

(d) The department of job and family services determines that 39968
the lease or transfer is an arm's length transaction pursuant to 39969
rules the department shall adopt in accordance with Chapter 119. 39970
of the Revised Code no later than December 31, 2000. The rules 39971
shall provide that a lease or transfer is an arm's length 39972
transaction if all of the following, as applicable, apply: 39973

(i) In the case of a lease, once the lease goes into effect, 39974
the lessor has no direct or indirect interest in the lessee or, 39975
except as provided in division (J)(2)(b) of this section, the 39976
facility itself, including interest as an owner, officer, 39977
director, employee, independent contractor, or consultant, but 39978
excluding interest as a lessor. 39979

(ii) In the case of a lease, the lessor does not reacquire an 39980
interest in the facility except through the exercise of a lessor's 39981
rights in the event of a default. If the lessor reacquires an 39982
interest in the facility in this manner, the department shall 39983
treat the facility as if the lease never occurred when the 39984
department calculates its reimbursement rates for capital costs. 39985

(iii) In the case of a transfer, once the transfer goes into 39987
effect, the provider that made the transfer has no direct or 39988
indirect interest in the provider that acquires the facility or 39989
the facility itself, including interest as an owner, officer, 39990
director, employee, independent contractor, or consultant, but 39991
excluding interest as a creditor. 39992

(iv) In the case of a transfer, the provider that made the 39993
transfer does not reacquire an interest in the facility except 39994
through the exercise of a creditor's rights in the event of a 39995

default. If the provider reacquires an interest in the facility in 39996
this manner, the department shall treat the facility as if the 39997
transfer never occurred when the department calculates its 39998
reimbursement rates for capital costs. 39999

(v) The lease or transfer satisfies any other criteria 40000
specified in the rules. 40001

(e) Except in the case of hardship caused by a catastrophic 40002
event, as determined by the department, or in the case of a lessor 40003
or provider making the transfer who is at least sixty-five years 40004
of age, not less than twenty years have elapsed since, for the 40005
same facility, allowable cost of ownership was determined most 40006
recently under this division. 40007

~~Sec. 5111.262. Costs~~ For costs incurred during calendar year 40008
2000 and thereafter, costs reported in nursing facilities' cost 40009
reports for purchased nursing services shall be allowable direct 40010
care costs up to ~~the following amounts:~~ 40011

~~(A) For costs incurred during calendar year 1992, twenty per~~ 40012
~~cent of the nursing facility's direct care costs specified in the~~ 40013
~~cost report for services provided that year by registered nurses,~~ 40014
~~licensed practical nurses, and nurse aides who are employees of~~ 40015
~~the facility, plus one-half of the amount by which the reported~~ 40016
~~costs for purchased nursing services exceed that percentage;~~ 40017

~~(B) For costs incurred during calendar year 1993, fifteen per~~ 40018
~~cent of the nursing facility's costs specified in the cost report~~ 40019
~~for services provided that year by registered nurses, licensed~~ 40020
~~practical nurses, and nurse aides who are employees of the~~ 40021
~~facility, plus one-half of the amount by which the reported costs~~ 40022
~~for purchased nursing services exceed that percentage;~~ 40023

~~(C) For costs incurred during calendar year 1994 and each~~ 40024
~~calendar year thereafter, ten twenty per cent of the nursing~~ 40025

facility's costs specified in the cost report for services 40026
provided that year by registered nurses, licensed practical 40027
nurses, and nurse aides who are employees of the facility, plus 40028
one-half of the amount by which the reported costs for purchased 40029
nursing services exceed that percentage. 40030

Sec. 5111.28. (A) If a provider properly amends its cost 40031
report under section 5111.27 of the Revised Code and the amended 40032
report shows that the provider received a lower rate under the 40033
original cost report than it was entitled to receive, the 40034
department shall adjust the provider's rate prospectively to 40035
reflect the corrected information. The department shall pay the 40036
adjusted rate beginning two months after the first day of the 40037
month after the provider files the amended cost report. If the 40038
department finds, from an exception review of resident assessment 40039
information conducted after the effective date of the rate for 40040
direct care costs that is based on the assessment information, 40041
that inaccurate assessment information resulted in the provider 40042
receiving a lower rate than it was entitled to receive, the 40043
department prospectively shall adjust the provider's rate 40044
accordingly and shall make payments using the adjusted rate for 40045
the remainder of the calendar quarter for which the assessment 40046
information is used to determine the rate, beginning one month 40047
after the first day of the month after the exception review is 40048
completed. 40049

(B) If the provider properly amends its cost report under 40050
section 5111.27 of the Revised Code, the department makes a 40051
finding based on an audit under that section, or the department 40052
makes a finding based on an exception review of resident 40053
assessment information conducted under that section after the 40054
effective date of the rate for direct care costs that is based on 40055
the assessment information, any of which results in a 40056
determination that the provider has received a higher rate than it 40057

was entitled to receive, the department shall recalculate the
provider's rate using the revised information. The department
shall apply the recalculated rate to the periods when the provider
received the incorrect rate to determine the amount of the
overpayment. The provider shall refund the amount of the
overpayment.

In addition to requiring a refund under this division, the
department may charge the provider interest at the applicable rate
specified in this division from the time the overpayment was made.

(1) If the overpayment resulted from costs reported for
calendar year 1993, the interest shall be no greater than one and
one-half times the average bank prime rate.

(2) If the overpayment resulted from costs reported for
subsequent calendar years:

(a) The interest shall be no greater than two times the
average bank prime rate if the overpayment was equal to or less
than one per cent of the total medicaid payments to the provider
for the fiscal year for which the incorrect information was used
to establish a rate.

(b) The interest shall be no greater than two and one-half
times the current average bank prime rate if the overpayment was
greater than one per cent of the total medicaid payments to the
provider for the fiscal year for which the incorrect information
was used to establish a rate.

~~(3) The department shall determine the average bank prime
rate using statistical release H.15, "selected interest rates," a
weekly publication of the federal reserve board, or any successor
publication. If statistical release H.15, or its successor, ceases
to contain the bank prime rate information or ceases to be
published, the department shall request a written statement of the
average bank prime rate from the federal reserve bank of Cleveland~~

~~or the federal reserve board.~~

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(C) The department also may impose the following penalties:

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(1) If a provider does not furnish invoices or other documentation that the department requests during an audit within sixty days after the request, no more than the greater of one thousand dollars per audit or twenty-five per cent of the cumulative amount by which the costs for which documentation was not furnished increased the total medicaid payments to the provider during the fiscal year for which the costs were used to establish a rate;

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(2) If an owner fails to provide notice of sale of the facility or voluntary termination of participation in the medical assistance program, as required by section 5111.25 or 5111.251 of the Revised Code, no more than ~~two~~ the current average bank prime rate plus four per cent of the last two monthly payments.

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(D) If the provider continues to participate in the medical assistance program, the department shall deduct any amount that the provider is required to refund under this section, and the amount of any interest charged or penalty imposed under this section, from the next available payment from the department to the provider. The department and the provider may enter into an agreement under which the amount, together with interest, is deducted in installments from payments from the department to the provider.

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(E) The department shall transmit refunds and penalties to the treasurer of state for deposit in the general revenue fund.

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(F) For the purpose of this section, the department shall determine the average bank prime rate using statistical release H.15, "selected interest rates," a weekly publication of the federal reserve board, or any successor publication. If statistical release H.15, or its successor, ceases to contain the

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bank prime rate information or ceases to be published, the 40120
department shall request a written statement of the average bank 40121
prime rate from the federal reserve bank of Cleveland or the 40122
federal reserve board. 40123

Sec. 5111.29. (A) The director of job and family services 40124
shall adopt rules in accordance with Chapter 119. of the Revised 40125
Code that establish a process under which a nursing facility or 40126
intermediate care facility for the mentally retarded, or a group 40127
or association of facilities, may seek reconsideration of rates 40128
established under sections 5111.23 to 5111.28 of the Revised Code, 40129
including a rate for direct care costs recalculated before the 40130
effective date of the rate as a result of an exception review of 40131
resident assessment information conducted under section 5111.27 of 40132
the Revised Code. 40133

(1) Except as provided in divisions (A)(2) to (4) of this 40134
section, the only issue that a facility, group, or association may 40135
raise in the rate reconsideration shall be whether the rate was 40136
calculated in accordance with sections 5111.23 to 5111.28 of the 40137
Revised Code and the rules adopted under those sections. The rules 40138
shall permit a facility, group, or association to submit written 40139
arguments or other materials that support its position. The rules 40140
shall specify time frames within which the facility, group, or 40141
association and the department must act. If the department 40142
determines, as a result of the rate reconsideration, that the rate 40143
established for one or more facilities is less than the rate to 40144
which it is entitled, the department shall increase the rate. If 40145
the department has paid the incorrect rate for a period of time, 40146
the department shall pay the facility the difference between the 40147
amount it was paid for that period and the amount it should have 40148
been paid. 40149

(2) The rules shall provide that during a fiscal year, the 40150

department, by means of the rate reconsideration process, may
increase a facility's rate as calculated under sections 5111.23 to
5111.28 of the Revised Code if the facility demonstrates that its
actual, allowable costs have increased because of extreme
circumstances. A facility may qualify for a rate increase only if
its per diem, actual, allowable costs have increased to a level
that exceeds its total rate, including any efficiency incentive
and return on equity payment. The rules shall specify the
circumstances that would justify a rate increase under division
(A)(2) of this section. The In the case of nursing facilities, the
rules shall provide that the extreme circumstances include
increased security costs for an inner-city nursing facility and an
increase in workers' compensation experience rating of greater
than five per cent for a facility that has an appropriate claims
management program but do not include a change of ownership that
results from bankruptcy, foreclosure, or findings of violations of
certification requirements by the department of health. In the
case of intermediate care facilities for the mentally retarded,
the rules shall provide that the extreme circumstances include,
but are not limited to, renovations approved under division (D) of
section 5111.251 of the Revised Code, an increase in workers'
compensation experience rating of greater than five per cent for a
facility that has an appropriate claims management program,
increased security costs for an inner-city facility, and a change
of ownership that results from bankruptcy, foreclosure, or
findings of violations of certification requirements by the
department of health. An increase under division (A)(2) of this
section is subject to any rate limitations or maximum rates
established by sections 5111.23 to 5111.28 of the Revised Code for
specific cost centers. Any rate increase granted under division
(A)(2) of this section shall take effect on the first day of the
first month after the department receives the request.

(3) The rules shall provide that the department, through the rate reconsideration process, may increase a facility's rate as calculated under sections 5111.23 to 5111.28 of the Revised Code if the department, in its sole discretion, determines that the rate as calculated under those sections works an extreme hardship on the facility.

(4) The rules shall provide that when beds certified for the medical assistance program are added to an existing facility, replaced at the same site, or subject to a change of ownership or lease, the department, through the rate reconsideration process, shall increase the facility's rate for capital costs proportionately, as limited by any applicable limitation under section 5111.25 or 5111.251 of the Revised Code, to account for the costs of the beds that are added, replaced, or subject to a change of ownership or lease. The department shall make this increase one month after the first day of the month after the department receives sufficient documentation of the costs. Any rate increase granted under division (A)(4) of this section after June 30, 1993, shall remain in effect until the effective date of a rate calculated under section 5111.25 or 5111.251 of the Revised Code that includes costs incurred for a full calendar year for the bed addition, bed replacement, or change of ownership or lease. The facility shall report double accumulated depreciation in an amount equal to the depreciation included in the rate adjustment on its cost report for the first year of operation. During the term of any loan used to finance a project for which a rate adjustment is granted under division (A)(4) of this section, if the facility is operated by the same provider, the facility shall subtract from the interest costs it reports on its cost report an amount equal to the difference between the following:

(a) The actual, allowable interest costs for the loan during the calendar year for which the costs are being reported;

(b) The actual, allowable interest costs attributable to the loan that were used to calculate the rates paid to the facility during the same calendar year.

(5) The department's decision at the conclusion of the reconsideration process shall not be subject to any administrative proceedings under Chapter 119. or any other provision of the Revised Code.

(B) Any audit disallowance that the department makes as the result of an audit under section 5111.27 of the Revised Code, any adverse finding that results from an exception review of resident assessment information conducted under that section after the effective date of the facility's rate that is based on the assessment information, and any penalty the department imposes under division (C) of section 5111.28 of the Revised Code shall be subject to an adjudication conducted in accordance with Chapter 119. of the Revised Code.

Sec. 5111.34. (A) There is hereby created the nursing facility reimbursement study council consisting of the following fifteen members:

(1) The director of job and family services;

(2) The deputy director of the office of Ohio health plans of the department of job and family services;

(3) An employee of the governor's office;

(4) The director of health;

(5) The director of aging;

(6) Two members of the house of representatives, appointed by the speaker of the house of representatives;

(7) Two members of the senate, appointed by the president of the senate;

<u>(8) Two representatives of each of the following</u>	40244
<u>organizations, appointed by their respective governing bodies:</u>	40245
<u>(a) The Ohio academy of nursing homes;</u>	40246
<u>(b) The association of Ohio philanthropic homes and housing</u>	40247
<u>for the aging;</u>	40248
<u>(c) The Ohio health care association.</u>	40249
<u>Initial appointments of members described in divisions</u>	40250
<u>(A)(6), (7), and (8) of this section shall be made no later than</u>	40251
<u>ninety days after the effective date of this section. Vacancies in</u>	40252
<u>any of those appointments shall be filled in the same manner as</u>	40253
<u>original appointments. The members described in divisions (A)(6),</u>	40254
<u>(7), and (8) of this section shall serve at the pleasure of the</u>	40255
<u>official or governing body appointing the member. The members</u>	40256
<u>described in divisions (A)(1), (2), (3), (4), and (5) of this</u>	40257
<u>section shall serve for as long as they hold the position that</u>	40258
<u>qualifies them for membership on the council. The speaker of the</u>	40259
<u>house of representatives and the president of the senate jointly</u>	40260
<u>shall appoint the chairperson of the council. Members of the</u>	40261
<u>council shall serve without compensation.</u>	40262
<u>(B) The council shall review, on an ongoing basis, the system</u>	40263
<u>established by sections 5111.20 to 5111.32 of the Revised Code for</u>	40264
<u>reimbursing nursing facilities under the medical assistance</u>	40265
<u>program. The council shall recommend any changes it determines are</u>	40266
<u>necessary. The council periodically shall report its activities,</u>	40267
<u>findings, and recommendations to the governor, the speaker of the</u>	40268
<u>house of representatives, and the president of the senate.</u>	40269
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<u>Sec. 5111.63. For the purposes of this section, "facility,"</u>	40271
<u>"medicare," and "medicaid" have the same meanings as in section</u>	40272
<u>3721.10 of the Revised Code.</u>	40273

The department of health shall be the designee of the 40274
department of job and family services for the purpose of 40275
conducting a hearing pursuant to section 3721.162 of the Revised 40276
Code concerning a facility's decision to transfer or discharge a 40277
resident if the resident is a medicaid recipient or medicare 40278
beneficiary. 40279

Sec. 5111.85. (A) As used in this section, "medicaid waiver 40280
component" means a component of the medicaid program authorized by 40281
a waiver granted by the United States department of health and 40282
human services under section 1115 or 1915 of the "Social Security 40283
Act," 49 Stat. 620 (1935), 42 U.S.C.A. 1315 or 1396n. "Medicaid 40284
waiver component" does not include a managed care system 40285
established under section 5111.17 of the Revised Code. 40286

(B) The director of job and family services may adopt rules 40287
under Chapter 119. of the Revised Code governing medicaid waiver 40288
components that establish all of the following: 40289

(1) Eligibility requirements for the medicaid waiver 40290
components; 40291

(2) The type, amount, duration, and scope of services the 40292
medicaid waiver components provide; 40293

(3) The conditions under which the medicaid waiver components 40294
cover services; 40295

(4) The amount the medicaid waiver components pay for 40296
services or the method by which the amount is determined; 40297

(5) The manner in which the medicaid waiver components pay 40298
for services; 40299

(6) Safeguards for the health and welfare of medicaid 40300
recipients receiving services under a medicaid waiver component; 40301

(7) Procedures for enforcing the rules, including 40302

establishing corrective action plans for, and imposing financial 40303
and administrative sanctions on, persons and government entities 40304
that violate the rules. Sanctions shall include terminating 40305
medicaid provider agreements. The procedures shall include due 40306
process protections. 40307

(8) Other policies necessary for the efficient administration 40308
of the medicaid waiver components. 40309

(C) The director of job and family services may adopt 40310
different rules for the different medicaid waiver components. The 40311
rules shall be consistent with the terms of the waiver authorizing 40312
the medicaid waiver component. 40313

(D) The director of job and family services may conduct 40314
reviews of the medicaid waiver components. The reviews may include 40315
physical inspections of records and sites where services are 40316
provided under the medicaid waiver components and interviews of 40317
providers and recipients of the services. If the director 40318
determines pursuant to a review that a person or government entity 40319
has violated a rule governing a medicaid waiver component, the 40320
director may establish a corrective action plan for the violator 40321
and impose fiscal, administrative, or both types of sanctions on 40322
the violator in accordance with rules adopted under division (B) 40323
of this section. 40324

Sec. 5111.86. The department of job and family services may 40325
enter into interagency agreements with one or more other state 40326
agencies to have the state agency administer one or more 40327
components of the medicaid program, or one or more aspects of a 40328
component, under the department's supervision. A state agency that 40329
enters into such an interagency agreement shall comply with any 40330
rules the director of job and family services has adopted 40331
governing the component, or aspect of the component, that the 40332
state agency is to administer, including any rules establishing 40333

review, audit, and corrective action plan requirements. 40334

A state agency that enters into an interagency agreement with 40335
the department under this section shall reimburse the department 40336
for the nonfederal share of the cost to the department of 40337
performing, or contracting for the performance of, a fiscal audit 40338
of the component of the medicaid program, or aspect of the 40339
component, that the state agency administers if rules governing 40340
the component, or aspect of the component, require that a fiscal 40341
audit be conducted. 40342

There is hereby created in the state treasury the medicaid 40343
administrative reimbursement fund. The department shall use money 40344
in the fund to pay for the nonfederal share of the cost of a 40345
fiscal audit for which a state agency is required by this section 40346
to reimburse the department. The department shall deposit the 40347
reimbursements into the fund. 40348

Sec. 5111.87. As used in this section and section 5111.871 of 40349
the Revised Code, "intermediate care facility for the mentally 40350
retarded" has the same meaning as in section 5111.20 of the 40351
Revised Code. 40352

The director of job and family services may apply to the 40353
United States secretary of health and human services for one or 40354
more medicaid waivers under which home and community-based 40355
services are provided to individuals with mental retardation or 40356
other developmental disability as an alternative to placement in 40357
an intermediate care facility for the mentally retarded. Before 40358
the director applies for a waiver under this section, the director 40359
shall seek, accept, and consider public comments. 40360

Sec. ~~5111.87~~ 5111.871. The department of job and family 40361
services shall enter into an interagency agreement with the 40362

department of mental retardation and developmental disabilities 40363
under section 5111.86 of the Revised Code with regard to the 40364
component of the medicaid program established by the department of 40365
job and family services under ~~a waiver~~ one or more waivers from 40366
the United States secretary of health and human services pursuant 40367
to section 1915 of the "Social Security Act," 49 Stat. 620 (1935), 40368
42 U.S.C.A. 1396n, as amended, to provide eligible ~~medical~~ 40369
~~assistance~~ medicaid recipients with home ~~or~~ and community-based 40370
services as an alternative to placement in an intermediate care 40371
facility for the mentally retarded ~~as defined in section 5111.20~~ 40372
~~of the Revised Code~~. The agreement shall provide for the 40373
department of mental retardation and developmental disabilities to 40374
administer the ~~program~~ component in accordance with the terms of 40375
the waiver. The ~~departments~~ directors of job and family services 40376
and mental retardation and developmental disabilities shall adopt 40377
rules in accordance with Chapter 119. of the Revised Code 40378
governing the ~~program~~ component. 40379

If the department of mental retardation and developmental 40380
disabilities or the department of job and family services denies 40381
an individual's application for home and community-based services 40382
provided under this medicaid component, the department that denied 40383
the services shall give timely notice to the individual that the 40384
individual may request a hearing under section 5101.35 of the 40385
Revised Code. 40386

The departments of mental retardation and developmental 40387
disabilities and job and family services may approve, reduce, 40388
deny, or terminate a service included in the individualized 40389
service plan developed for a medicaid recipient eligible for home 40390
and community-based services provided under this medicaid 40391
component. The departments shall consider the recommendations a 40392
county board of mental retardation and developmental disabilities 40393
makes under division (A)(1)(c) of section 5126.055 of the Revised 40394

Code. If either department approves, reduces, denies, or 40395
terminates a service, that department shall give timely notice to 40396
the medicaid recipient that the recipient may request a hearing 40397
under section 5101.35 of the Revised Code. 40398

If supported living or residential services, as defined in 40399
section 5126.01 of the Revised Code, are to be provided under this 40400
component, any person or government entity with a current, valid 40401
medicaid provider agreement and a current, valid license under 40402
section 5123.19 or certificate under section 5123.045 or 5126.431 40403
of the Revised Code may provide the services. 40404

Sec. 5111.872. When the department of mental retardation and 40405
developmental disabilities allocates enrollment numbers to a 40406
county board of mental retardation and developmental disabilities 40407
for home and community-based services provided under the component 40408
of the medicaid program that the department administers under 40409
section 5111.871 of the Revised Code, the department shall 40410
consider all of the following: 40411

(A) The number of individuals with mental retardation or 40412
other developmental disability who are on a waiting list the 40413
county board establishes under division (C) of section 5126.042 of 40414
the Revised Code for those services and are given priority on the 40415
waiting list pursuant to division (D) of that section; 40416

(B) The implementation component required by division (A)(3) 40417
of section 5126.054 of the Revised Code of the county board's plan 40418
approved under section 5123.046 of the Revised Code; 40419

(C) Anything else the department considers necessary to 40420
enable county boards to provide those services to individuals in 40421
accordance with the priority requirements of division (D) of 40422
section 5126.042 of the Revised Code. 40423

Sec. 5111.873. (A) Not later than the effective date of the 40424

first of any medicaid waivers the United States secretary of 40425
health and human services grants pursuant to a request made under 40426
section 5111.87 of the Revised Code, the director of job and 40427
family services shall adopt rules in accordance with Chapter 119. 40428
of the Revised Code establishing statewide fee schedules for home 40429
and community-based services provided under the component of the 40430
medicaid program that the department of mental retardation and 40431
developmental disabilities administers under section 5111.871 of 40432
the Revised Code. The rules shall provide for all of the 40433
following: 40434

(1) The department of mental retardation and developmental 40435
disabilities arranging for the initial and ongoing collection of 40436
cost information from a comprehensive, statistically valid sample 40437
of persons and government entities providing the services at the 40438
time the information is obtained; 40439

(2) The collection of consumer-specific information through 40440
an assessment instrument the department of mental retardation and 40441
developmental disabilities shall provide to the department of job 40442
and family services; 40443

(3) With the information collected pursuant to divisions 40444
(A)(1) and (2) of this section, an analysis of that information, 40445
and other information the director determines relevant, methods 40446
and standards for calculating the fee schedules that do all of the 40447
following: 40448

(a) Assure that the fees are consistent with efficiency, 40449
economy, and quality of care; 40450

(b) Consider the intensity of consumer resource need; 40451

(c) Recognize variations in different geographic areas 40452
regarding the resources necessary to assure the health and welfare 40453
of consumers; 40454

(d) Recognize variations in environmental supports available 40455

to consumers.

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(B) As part of the process of adopting rules under this section, the director shall consult with the director of mental retardation and developmental disabilities, representatives of county boards of mental retardation and developmental disabilities, persons who provide the home and community-based services, and other persons and government entities the director identifies.

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(C) The directors of job and family services and mental retardation and developmental disabilities shall review the rules adopted under this section at times they determine to ensure that the methods and standards established by the rules for calculating the fee schedules continue to do everything that division (A)(3) of this section requires.

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Sec. 5119.01. The director of mental health is the chief executive and administrative officer of the department of mental health. The director may establish procedures for the governance of the department, conduct of its employees and officers, performance of its business, and custody, use, and preservation of departmental records, papers, books, documents, and property. Whenever the Revised Code imposes a duty upon or requires an action of the department or any of its institutions, the director shall perform the action or duty in the name of the department, except that the medical director appointed pursuant to section 5119.07 of the Revised Code shall be responsible for decisions relating to medical diagnosis, treatment, rehabilitation, quality assurance, and the clinical aspects of the following: licensure of hospitals and residential facilities, research, community mental health plans, and delivery of mental health services.

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The director shall:

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(A) Adopt rules for the proper execution of the powers and

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duties of the department with respect to the institutions under
its control, and require the performance of additional duties by
the officers of the institutions as necessary to fully meet the
requirements, intents, and purposes of this chapter. In case of an
apparent conflict between the powers conferred upon any managing
officer and those conferred by such sections upon the department,
the presumption shall be conclusive in favor of the department.

(B) Adopt rules for the nonpartisan management of the
institutions under the department's control. An officer or
employee of the department or any officer or employee of any
institution under its control who, by solicitation or otherwise,
exerts influence directly or indirectly to induce any other
officer or employee of the department or any of its institutions
to adopt the exerting officer's or employee's political views or
to favor any particular person, issue, or candidate for office
shall be removed from the exerting officer's or employee's office
or position, by the department in case of an officer or employee,
and by the governor in case of the director.

(C) Appoint such employees, including the medical director,
as are necessary for the efficient conduct of the department, and
prescribe their titles and duties;

(D) Prescribe the forms of affidavits, applications, medical
certificates, orders of hospitalization and release, and all other
forms, reports, and records that are required in the
hospitalization or admission and release of all persons to the
institutions under the control of the department, or are otherwise
required under this chapter or Chapter 5122. of the Revised Code;

(E) Contract with hospitals licensed by the department under
section 5119.20 of the Revised Code for the care and treatment of
mentally ill patients, or with persons, organizations, or agencies
for the custody, supervision, care, or treatment of mentally ill

persons receiving services elsewhere than within the enclosure of 40519
a hospital operated under section 5119.02 of the Revised Code; 40520

(F) Exercise the powers and perform the duties relating to 40521
community mental health facilities and services that are assigned 40522
to the director under this chapter and Chapter 340. of the Revised 40523
Code; 40524

~~(G) Adopt rules under Chapter 119. of the Revised Code for 40525
the establishment of minimum standards, including standards for 40526
use of seclusion and restraint, of mental health services that are 40527
not inconsistent with nationally recognized applicable standards 40528
and that facilitate participation in federal assistance programs; 40529~~

~~(H)~~ Develop and implement clinical evaluation and monitoring 40530
of services that are operated by the department; 40531

~~(I)~~(H) At the director's discretion, adopt rules establishing 40532
standards for the adequacy of services provided by community 40533
mental health facilities, and certify the compliance of such 40534
facilities with the standards for the purpose of authorizing their 40535
participation in the health care plans of health insuring 40536
corporations under Chapter 1751. and sickness and accident 40537
insurance policies issued under Chapter 3923. of the Revised 40538
Code~~. The director shall cease to certify such compliance two 40539
years after the effective date of this amendment. The director 40540
shall rescind the rules after the date the director ceases to 40541
certify such compliance. 40542~~

~~(J)~~(I) Adopt rules establishing standards for the performance 40543
of evaluations by a forensic center or other psychiatric program 40544
or facility of the mental condition of defendants ordered by the 40545
court under section 2919.271, or 2945.371 of the Revised Code, and 40546
for the treatment of defendants who have been found incompetent to 40547
stand trial and ordered by the court under section 2945.38, 40548
2945.39, 2945.401, or 2945.402 of the Revised Code to receive 40549

treatment in facilities; 40550

~~(K)~~(J) On behalf of the department, have the authority and 40551
responsibility for entering into contracts and other agreements; 40552

~~(L)~~(K) Prepare and publish regularly a state mental health 40553
plan that describes the department's philosophy, current 40554
activities, and long-term and short-term goals and activities; 40555

~~(M)~~(L) Adopt rules in accordance with Chapter 119. of the 40556
Revised Code specifying the supplemental services that may be 40557
provided through a trust authorized by section 1339.51 of the 40558
Revised Code; 40559

~~(N)~~(M) Adopt rules in accordance with Chapter 119. of the 40560
Revised Code establishing standards for the maintenance and 40561
distribution to a beneficiary of assets of a trust authorized by 40562
section 1339.51 of the Revised Code; 40563

~~(O) As used in division (I) of this section:~~ 40564

~~(1) "Community mental health facility" means a facility that 40565
provides community mental health services and is included in the 40566
community mental health plan for the alcohol, drug addiction, and 40567
mental health service district in which it is located.~~ 40568

~~(2) "Community mental health service" means services, other 40569
than inpatient services, provided by a community mental health 40570
facility.~~ 40571

Sec. 5119.06. (A) The department of mental health shall: 40572

(1) Establish and support a program at the state level to 40573
promote a community support system in accordance with section 40574
340.03 of the Revised Code to be available for every alcohol, drug 40575
addiction, and mental health service district. The department 40576
shall define the essential elements of a community support system, 40577
shall assist in identifying resources and coordinating the 40578
planning, evaluation, and delivery of services to facilitate the 40579

access of mentally ill people to public services at federal, 40580
state, and local levels, and shall operate inpatient and other 40581
mental health services pursuant to the approved community mental 40582
health plan. 40583

(2) Provide training, consultation, and technical assistance 40584
regarding mental health programs and services and appropriate 40585
prevention and mental health promotion activities, including those 40586
that are culturally sensitive, to employees of the department, 40587
community mental health agencies and boards, and other agencies 40588
providing mental health services; 40589

(3) Promote and support a full range of mental health 40590
services that are available and accessible to all residents of 40591
this state, especially for severely mentally disabled children, 40592
adolescents, and adults, and other special target populations, 40593
including racial and ethnic minorities, as determined by the 40594
department. 40595

(4) Design and set criteria for the determination of severe 40596
mental disability; 40597

(5) Establish ~~criteria~~ standards for evaluation of mental 40598
health programs; 40599

(6) Promote, direct, conduct, and coordinate scientific 40600
research, taking ethnic and racial differences into consideration 40601
concerning the causes and prevention of mental illness, methods of 40602
providing effective services and treatment, and means of enhancing 40603
the mental health of all residents of this state; 40604

(7) Foster the establishment and availability of vocational 40605
rehabilitation services and the creation of employment 40606
opportunities for consumers of mental health services, including 40607
members of racial and ethnic minorities; 40608

(8) Establish a program to protect and promote the rights of 40609
persons receiving mental health services, including the issuance 40610

of guidelines on informed consent and other rights; 40611

(9) Establish, in consultation with board of alcohol, drug 40612
addiction, and mental health services representatives and after 40613
consideration of the recommendations of the medical director, 40614
guidelines for the development of community mental health plans 40615
and the review and approval or disapproval of such plans submitted 40616
pursuant to section 340.03 of the Revised Code; 40617

(10) Promote the involvement of persons who are receiving or 40618
have received mental health services, including families and other 40619
persons having a close relationship to a person receiving mental 40620
health services, in the planning, evaluation, delivery, and 40621
operation of mental health services. 40622

(11) Notify and consult with the relevant constituencies that 40623
may be affected by rules, standards, and guidelines issued by the 40624
department of mental health. These constituencies shall include 40625
consumers of mental health services and their families, and may 40626
include public and private providers, employee organizations, and 40627
others when appropriate. Whenever the department proposes the 40628
adoption, amendment, or rescission of rules under Chapter 119. of 40629
the Revised Code, the notification and consultation required by 40630
this division shall occur prior to the commencement of proceedings 40631
under Chapter 119. The department shall adopt rules under Chapter 40632
119. of the Revised Code that establish procedures for the 40633
notification and consultation required by this division. 40634
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(12) In cooperation with board of alcohol, drug addiction, 40636
and mental health services representatives, provide training 40637
regarding the provision of community-based mental health services 40638
to those department employees who are utilized in state-operated, 40639
community-based mental health services; 40640

(13) Provide ~~oversight and~~ consultation to the department of 40641

rehabilitation and correction ~~for~~ concerning the delivery of 40642
mental health services in state correctional institutions; 40643

~~(14) Audit mental health programs in state correctional 40644
institutions operated by the department of rehabilitation and 40645
correction for compliance with standards that have been jointly 40646
developed and promulgated by the department of mental health and 40647
the department of rehabilitation and correction. The standards 40648
shall include monitoring mechanisms to provide for quality of 40649
services in these programs. 40650~~

(B) The department of mental health may negotiate and enter 40651
into agreements with other agencies and institutions, both public 40652
and private, for the joint performance of its duties. 40653

Sec. 5119.22. (A)(1) As used in this section: 40654

(a) ~~Mental~~ "Community mental health agency" means a community 40655
mental health agency as defined in division (H) of section 5122.01 40656
of the Revised Code, or, until two years after the effective date 40657
of this amendment, a community mental health facility certified by 40658
the department of mental health pursuant to division ~~(I)~~(H) of 40659
section 5119.01 of the Revised Code. 40660

(b) ~~Mental~~ "Community mental health services" means any of 40661
the services listed in section 340.09 of the Revised Code. 40662

(c) "Personal care services" means services including, but 40663
not limited to, the following: 40664

(i) Assisting residents with activities of daily living; 40665

(ii) Assisting residents with self-administration of 40666
medication in accordance with rules adopted under this section; 40667

(iii) Preparing special diets, other than complex therapeutic 40668
diets, for residents pursuant to the instructions of a physician 40669
or a licensed dietitian, in accordance with rules adopted under 40670
this section. 40671

"Personal care services" does not include "skilled nursing care" as defined in section 3721.01 of the Revised Code. A facility need not provide more than one of the services listed in division (A)(1)(c) of this section to be considered to be providing personal care services.

(d) "Residential facility" means a publicly or privately operated home or facility that provides one of the following:

(i) Room and board, personal care services, and community mental health services to one or more persons with mental illness or persons with severe mental disabilities who are referred by or are receiving community mental health services from a community mental health agency, hospital, or practitioner;

(ii) Room and board and personal care services to one or two persons with mental illness or persons with severe mental disabilities who are referred by or are receiving community mental health services from a community mental health agency, hospital, or practitioner;

(iii) Room and board to five or more persons with mental illness or persons with severe mental disabilities who are referred by or are receiving community mental health services from a community mental health agency, hospital, or practitioner.

The following are not residential facilities: the residence of a relative or guardian of a mentally ill individual, a hospital subject to licensure under section 5119.20 of the Revised Code, a residential facility as defined in section 5123.19 of the Revised Code, a facility providing care for a child in the custody of a public children services agency or a private agency certified under section 5103.03 of the Revised Code, a foster care facility subject to section 5103.03 of the Revised Code, an adult care facility subject to licensure under Chapter 3722. of the Revised Code, and a nursing home, residential care facility, or home for

the aging subject to licensure under section 3721.02 of the Revised Code. 40703
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(2) Nothing in division (A)(1)(d) of this section shall be construed to permit personal care services to be imposed on a resident who is capable of performing the activity in question without assistance. 40705
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(3) Except in the case of a residential facility described in division (A)(1)(d)(i) of this section, members of the staff of a residential facility shall not administer medication to residents, all medication taken by residents of a residential facility shall be self-administered, and no person shall be admitted to or retained by a residential facility unless the person is capable of taking the person's own medication and biologicals, as determined in writing by the person's personal physician. Members of the staff of a residential facility may do any of the following: 40709
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(a) Remind a resident when to take medication and watch to ensure that the resident follows the directions on the container; 40718
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(b) Assist a resident in the self-administration of medication by taking the medication from the locked area where it is stored, in accordance with rules adopted pursuant to this section, and handing it to the resident. If the resident is physically unable to open the container, a staff member may open the container for the resident. 40721
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(c) Assist a physically impaired but mentally alert resident, such as a resident with arthritis, cerebral palsy, or Parkinson's disease, in removing oral or topical medication from containers and in consuming or applying the medication, upon request by or with the consent of the resident. If a resident is physically unable to place a dose of medicine to the resident's mouth without spilling it, a staff member may place the dose in a container and 40727
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place the container to the mouth of the resident. 40734

(B) Every person operating or desiring to operate a 40735
residential facility shall apply for licensure of the facility to 40736
the department of mental health and shall send a copy of the 40737
application to the board of alcohol, drug addiction, and mental 40738
health services whose service district includes the county in 40739
which the person operates or desires to operate a residential 40740
facility. The board shall review such applications and recommend 40741
approval or disapproval to the department. Each recommendation 40742
shall be consistent with the board's community mental health plan. 40743

(C) The department of mental health shall inspect and license 40744
the operation of residential facilities. The department shall 40745
consider the past record of the facility and the applicant or 40746
licensee in arriving at its licensure decision. The department may 40747
issue full, probationary, and interim licenses. A full license 40748
shall expire two years after the date of issuance, a probationary 40749
license shall expire in a shorter period of time as prescribed by 40750
rule adopted by the director of mental health pursuant to Chapter 40751
119. of the Revised Code, and an interim license shall expire 40752
ninety days after the date of issuance. The department may refuse 40753
to issue or renew and may revoke a license if it finds the 40754
facility is not in compliance with rules adopted by the department 40755
pursuant to division (G) of this section or if any facility 40756
operated by the applicant or licensee has had repeated violations 40757
of statutes or rules during the period of previous licenses. 40758
Proceedings initiated to deny applications for full or 40759
probationary licenses or to revoke such licenses are governed by 40760
Chapter 119. of the Revised Code. 40761

(D) The department may issue an interim license to operate a 40762
residential facility if both of the following conditions are met: 40763

(1) The department determines that the closing of or the need 40764
to remove residents from another residential facility has created 40765

an emergency situation requiring immediate removal of residents 40766
and an insufficient number of licensed beds are available. 40767
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(2) The residential facility applying for an interim license 40769
meets standards established for interim licenses in rules adopted 40770
by the director under Chapter 119. of the Revised Code. 40771

An interim license shall be valid for ninety days and may be 40772
renewed by the director no more than twice. Proceedings initiated 40773
to deny applications for or to revoke interim licenses under this 40774
division are not subject to Chapter 119. of the Revised Code. 40775

(E) The department of mental health may conduct an inspection 40776
of a residential facility: 40777

(1) Prior to the issuance of a license to a prospective 40778
operator; 40779

(2) Prior to the renewal of any operator's license; 40780

(3) To determine whether a facility has completed a plan of 40781
correction required pursuant to this division and corrected 40782
deficiencies to the satisfaction of the department and in 40783
compliance with this section and rules adopted pursuant to it; 40784

(4) Upon complaint by any individual or agency; 40785

(5) At any time the director considers an inspection to be 40786
necessary in order to determine whether a residential facility is 40787
in compliance with this section and rules adopted pursuant to this 40788
section. 40789

In conducting inspections the department may conduct an 40790
on-site examination and evaluation of the residential facility, 40791
its personnel, activities, and services. The department shall have 40792
access to examine all records, accounts, and any other documents 40793
relating to the operation of the residential facility, and shall 40794
have access to the facility in order to conduct interviews with 40795

the operator, staff, and residents. Following each inspection and
review, the department shall complete a report listing any
deficiencies, and including, when appropriate, a time table within
which the operator shall correct the deficiencies. The department
may require the operator to submit a plan of correction describing
how the deficiencies will be corrected.

(F) No person shall do any of the following:

(1) Operate a residential facility unless the facility holds
a valid license;

(2) Violate any of the conditions of licensure after having
been granted a license;

(3) Interfere with a state or local official's inspection or
investigation of a residential facility;

(4) Violate any of the provisions of this section or any
rules adopted pursuant to this section.

(G) The director shall adopt and may amend and rescind rules
pursuant to Chapter 119. of the Revised Code, prescribing minimum
standards for the health, safety, adequacy, and cultural
specificity and sensitivity of treatment of and services for
persons in residential facilities; establishing procedures for the
issuance, renewal or revocation of the licenses of such
facilities; establishing the maximum number of residents of a
facility; establishing the rights of residents and procedures to
protect such rights; and requiring an affiliation agreement
approved by the board between a residential facility and a mental
health agency. Such affiliation agreement must be consistent with
the residential portion of the community mental health plan
submitted pursuant to section 340.03 of the Revised Code.

(H) The department may investigate any facility that has been
reported to the department or that the department has reasonable
cause to believe is operating as a residential facility without a

valid license.

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(I) The department may withhold the source of any complaint reported as a violation of this act when the department determines that disclosure could be detrimental to the department's purposes or could jeopardize the investigation. The department may disclose the source of any complaint if the complainant agrees in writing to such disclosure and shall disclose the source upon order by a court of competent jurisdiction.

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(J) The director of mental health may petition the court of common pleas of the county in which a residential facility is located for an order enjoining any person from operating a residential facility without a license or from operating a licensed facility when, in the director's judgment, there is a real and present danger to the health or safety of any of the occupants of the facility. The court shall have jurisdiction to grant such injunctive relief upon a showing that the respondent named in the petition is operating a facility without a license or there is a real and present danger to the health or safety of any residents of the facility.

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(K) Whoever violates division (F) of this section or any rule adopted under this section is liable for a civil penalty of one hundred dollars for the first offense; for each subsequent offense, such violator is liable for a civil penalty of five hundred dollars. If the violator does not pay, the attorney general, upon the request of the director of mental health, shall bring a civil action to collect the penalty. Fines collected pursuant to this section shall be deposited into the state treasury to the credit of the mental health sale of goods and services fund.

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Sec. 5119.61. Any provision in this chapter that refers to a board of alcohol, drug addiction, and mental health services also

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refers to the community mental health board in an alcohol, drug 40858
addiction, and mental health service district that has a community 40859
mental health board. 40860

The director of mental health with respect to all facilities 40861
and programs established and operated under Chapter 340. of the 40862
Revised Code for mentally ill and emotionally disturbed persons, 40863
shall do all of the following: 40864

(A) Adopt rules pursuant to Chapter 119. of the Revised Code 40865
that may be necessary to carry out the purposes of Chapter 340. 40866
and sections 5119.61 to 5119.63 of the Revised Code. 40867

(1) The rules shall include all of the following: 40868

(a) Rules governing a community mental health agency's 40869
services under section 340.091 of the Revised Code to an 40870
individual referred to the agency under division (C)(2) of section 40871
173.35 of the Revised Code; 40872

(b) For the purpose of division (A)~~(14)~~(16) of section 340.03 40873
of the Revised Code, rules governing the duties of mental health 40874
agencies and boards of alcohol, drug addiction, and mental health 40875
services under section 3722.18 of the Revised Code regarding 40876
referrals of individuals with mental illness or severe mental 40877
disability to adult care facilities and effective arrangements for 40878
ongoing mental health services for the individuals. The rules 40879
shall do at least the following: 40880

(i) Provide for agencies and boards to participate fully in 40881
the procedures owners and managers of adult care facilities must 40882
follow under division (A)(2) of section 3722.18 of the Revised 40883
Code; 40884

(ii) Specify the manner in which boards are accountable for 40885
ensuring that ongoing mental health services are effectively 40886
arranged for individuals with mental illness or severe mental 40887
disability who are referred by the board or mental health agency 40888

under contract with the board to an adult care facility. 40889

(c) Rules governing a board of alcohol, drug addiction, and 40890
mental health services when making a report to the director of 40891
health under section 3722.17 of the Revised Code regarding the 40892
quality of care and services provided by an adult care facility to 40893
a person with mental illness or a severe mental disability. 40894

(2) Rules may be adopted to govern the method of paying a 40895
community mental health facility described in division (B) of 40896
section 5111.022 of the Revised Code for providing services 40897
established by division (A) of that section. Such rules must be 40898
consistent with the contract entered into between the departments 40899
of human job and family services and mental health under division 40900
(E) of that section and include requirements ensuring appropriate 40901
service utilization. 40902

~~(B) Adopt rules requiring each public or private agency 40903
providing mental health services or facilities under a contract 40904
with a board of alcohol, drug addiction, and mental health 40905
services and any program operated by such a board to have a 40906
written policy that addresses the rights of clients including all 40907
of the following: 40908~~

~~(1) The right to a copy of the agency's policy of client 40909
rights; 40910~~

~~(2) The right at all times to be treated with consideration 40911
and respect for the client's privacy and dignity; 40912~~

~~(3) The right to have access to the client's own psychiatric, 40913
medical, or other treatment records unless access is specifically 40914
restricted in the client's treatment plan for clear treatment 40915
reasons; 40916~~

~~(4) The right to have a client rights officer provided by the 40917
board or agency advise the client of the client's rights, 40918
including the client's rights under Chapter 5122. of the Revised 40919~~

~~Code if the client is committed to the board or agency.~~ 40920

~~(C) Require each board of alcohol, drug addiction, and mental health services to ensure that each contract agency establishes grievance procedures available to all recipients of services or applicants for services;~~ 40921
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~~(D) Define minimum standards for qualifications of personnel, professional services, and mental health professionals as defined in section 340.02 of the Revised Code;~~ 40925
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~~(E) Review and evaluate, and, taking into account the findings and recommendations of the board of alcohol, drug addiction, and mental health services of the district served by the program and the requirements and priorities of the state mental health plan, including the needs of residents of the district now residing in state mental institutions, approve and allocate funds to support community programs, and make recommendations for needed improvements to boards of alcohol, drug addiction, and mental health services;~~ 40928
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~~(F)(C) Withhold state and federal funds for any program, in whole or in part, from a board of alcohol, drug addiction, and mental health services in the event of failure of that program to comply with Chapter 340. or section 5119.61, 5119.611, 5119.612, or 5119.62 of the Revised Code or rules of the department of mental health. The director shall identify the areas of noncompliance and the action necessary to achieve compliance. The director shall offer technical assistance to the board to achieve compliance. The director shall give the board a reasonable time within which to comply or to present its position that it is in compliance. Before withholding funds, a hearing shall be conducted to determine if there are continuing violations and that either assistance is rejected or the board is unable to achieve compliance. Subsequent to the hearing process, if it is determined that compliance has not been achieved, the director may allocate~~ 40937
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all or part of the withheld funds to a public or private agency to 40952
provide the services not in compliance until the time that there 40953
is compliance. The director shall establish rules pursuant to 40954
Chapter 119. of the Revised Code to implement this division. 40955

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~~(G)~~(D) Withhold state or federal funds from a board of 40957
alcohol, drug addiction, and mental health services that denies 40958
available service on the basis of religion, race, color, creed, 40959
sex, national origin, age, disability as defined in section 40960
4112.01 of the Revised Code, developmental disability, or the 40961
inability to pay; 40962

~~(H)~~(E) Provide consultative services to community mental 40963
health ~~programs~~ agencies with the knowledge and cooperation of the 40964
board of alcohol, drug addiction, and mental health services; 40965

~~(I)~~(F) Provide to boards of alcohol, drug addiction, and 40966
mental health services state or federal funds, in addition to 40967
those allocated under section 5119.62 of the Revised Code, for 40968
special programs or projects the director considers necessary but 40969
for which local funds are not available; 40970

~~(J)~~(G) Establish criteria by which a board of alcohol, drug 40971
addiction, and mental health services reviews and evaluates the 40972
quality, effectiveness, and efficiency of services provided 40973
through its community mental health plan. The criteria shall 40974
include requirements ensuring appropriate service utilization. The 40975
department shall assess a board's evaluation of services and the 40976
compliance of each board with this section, Chapter 340. or 40977
section 5119.62 of the Revised Code, and other state or federal 40978
law and regulations. The department, in cooperation with the 40979
board, periodically shall review and evaluate the quality, 40980
effectiveness, and efficiency of services provided through each 40981
board. The department shall collect information that is necessary 40982
to perform these functions. 40983

~~(K)~~(H) Develop and operate a community mental health information system. 40984
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Boards of alcohol, drug abuse, and mental health services shall submit information requested by the department in the form and manner prescribed by the department. Information collected by the department shall include, but not be limited to, all of the following: 40986
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(1) Information regarding units of services provided in whole or in part under contract with a board, including diagnosis and special needs, demographic information, the number of units of service provided, past treatment, financial status, and service dates in accordance with rules adopted by the department in accordance with Chapter 119. of the Revised Code; 40991
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(2) Financial information other than price or price-related data regarding expenditures of boards and community mental health agencies, including units of service provided, budgeted and actual expenses by type, and sources of funds. 40997
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Boards shall submit the information specified in division ~~(K)~~(H)(1) of this section no less frequently than annually for each client, and each time the client's case is opened or closed. The department shall not collect any information for the purpose of identifying by name any person who receives a service through a board of alcohol, drug addiction, and mental health services, except as required by state or federal law to validate appropriate reimbursement. For the purposes of division ~~(K)~~(H)(1) of this section, the department shall use an identification system that is consistent with applicable nationally recognized standards. 41001
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~~(L)~~(I) Review each board's community mental health plan submitted pursuant to section 340.03 of the Revised Code and approve or disapprove it in whole or in part. Periodically, in consultation with representatives of boards and after considering 41011
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the recommendations of the medical director, the director shall 41015
issue criteria for determining when a plan is complete, criteria 41016
for plan approval or disapproval, and provisions for conditional 41017
approval. The factors that the director considers may include, but 41018
are not limited to, the following: 41019

(1) The mental health needs of all persons residing within 41020
the board's service district, especially severely mentally 41021
disabled children, adolescents, and adults; 41022

(2) The demonstrated quality, effectiveness, efficiency, and 41023
cultural relevance of the services provided in each service 41024
district, the extent to which any services are duplicative of 41025
other available services, and whether the services meet the needs 41026
identified above; 41027

(3) The adequacy of the board's accounting for the 41028
expenditure of funds. 41029

If the director disapproves all or part of any plan, the 41030
director shall provide the board an opportunity to present its 41031
position. The director shall inform the board of the reasons for 41032
the disapproval and of the criteria that must be met before the 41033
plan may be approved. The director shall give the board a 41034
reasonable time within which to meet the criteria, and shall offer 41035
technical assistance to the board to help it meet the criteria. 41036

If the approval of a plan remains in dispute thirty days 41037
prior to the conclusion of the fiscal year in which the board's 41038
current plan is scheduled to expire, the board or the director may 41039
request that the dispute be submitted to a mutually agreed upon 41040
third-party mediator with the cost to be shared by the board and 41041
the department. The mediator shall issue to the board and the 41042
department recommendations for resolution of the dispute. Prior to 41043
the conclusion of the fiscal year in which the current plan is 41044
scheduled to expire, the director, taking into consideration the 41045
recommendations of the mediator, shall make a final determination 41046

and approve or disapprove the plan, in whole or in part. 41047

~~(M) Visit and evaluate any community mental health program, 41048
agency, or facility, in cooperation with a board of alcohol, drug 41049
addiction, and mental health services, to determine if the 41050
services meet minimum standards pursuant to division (G) of 41051
section 5119.01 of the Revised Code. If the director determines 41052
that the services meet minimum standards, the director shall so 41053
certify. 41054~~

~~If the director determines that the services of any program, 41055
agency, or facility that has a contract with a board do not meet 41056
minimum standards, the director shall identify the areas of 41057
noncompliance, specify what action is necessary to meet the 41058
standards, and offer technical assistance to the board so that it 41059
may assist the program, agency, or facility to meet minimum 41060
standards. The director shall give the board a reasonable time 41061
within which to demonstrate that the services meet minimum 41062
standards or to bring the program or facility into compliance with 41063
the standards. If the director concludes that the services 41064
continue to fail to meet minimum standards, the director may 41065
request that the board reallocate the funds for those services to 41066
another program, agency, or facility which meets minimum 41067
standards. If the board does not reallocate those funds in a 41068
reasonable period of time, the director may withhold state and 41069
federal funds for the services and allocate those funds directly 41070
to a public or private agency that meets minimum standards. 41071~~

~~Each program, agency, and facility shall pay a fee for the 41072
certification review required by this division. Fees shall be paid 41073
into the sale of goods and services fund created pursuant to 41074
section 5119.161 of the Revised Code. 41075~~

~~The director shall adopt rules under Chapter 119. of the 41076
Revised Code to implement this division. The rules shall do all of 41077
the following: 41078~~

~~(1) Establish the process for certification of services of programs, agencies, or facilities;~~ 41079
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~~(2) Set the amount of certification review fees based on a portion of the cost of performing the review;~~ 41081
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~~(3) Specify the type of notice and hearing to be provided prior to a decision whether to reallocate funds.~~ 41083
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Sec. 5119.611. (A) A board of alcohol, drug addiction, and mental health services may not contract with a community mental health agency under division (A)(8)(a) of section 340.03 of the Revised Code to provide community mental health services included in the board's community mental health plan unless the services are certified by the director of mental health under this section. 41085
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A community mental health agency that seeks the director's certification of its community mental health services shall submit an application to the director. On receipt of the application, the director may visit and shall evaluate the agency to determine whether its services satisfy the standards established by rules adopted under division (C) of this section. The director shall make the evaluation, and, if the director visits the agency, shall make the visit, in cooperation with the board of alcohol, drug addiction, and mental health services with which the agency seeks to contract. 41091
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If the director determines that a community mental health agency's services satisfy the standards, the director shall certify the services. 41101
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If the director determines that a community mental health agency's services do not satisfy the standards, the director shall identify the areas of noncompliance, specify what action is necessary to satisfy the standards, and offer technical assistance to the board of alcohol, drug addiction, and mental health 41104
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services so that the board may assist the agency in satisfying the 41109
standards. The director shall give the agency a reasonable time 41110
within which to demonstrate that its services satisfy the 41111
standards or to bring the services into compliance with the 41112
standards. If the director concludes that the services continue to 41113
fail to satisfy the standards, the director may request that the 41114
board reallocate the funds for the community mental health 41115
services the agency was to provide to another community mental 41116
health agency whose community mental health services satisfy the 41117
standards. If the board does not reallocate those funds in a 41118
reasonable period of time, the director may withhold state and 41119
federal funds for the community mental health services and 41120
allocate those funds directly to a community mental health agency 41121
whose community mental health services satisfy the standards. 41122

(B) Each community mental health agency seeking certification 41123
of its community mental health services under this section shall 41124
pay a fee for the certification review required by this section. 41125
Fees shall be paid into the sale of goods and services fund 41126
created pursuant to section 5119.161 of the Revised Code. 41127

(C) The director shall adopt rules in accordance with Chapter 41129
119. of the Revised Code to implement this section. The rules 41130
shall do all of the following: 41131

(1) Establish certification standards for community mental 41132
health services that are consistent with nationally recognized 41133
applicable standards and facilitate participation in federal 41134
assistance programs. The rules shall include as certification 41135
standards only requirements that improve the quality of services 41136
or the health and safety of clients of community mental health 41137
services. The standards shall address at a minimum all of the 41138
following: 41139

(a) Reporting major unusual incidents to the director; 41140

<u>(b) Procedures for applicants for and clients of community mental health services to file grievances and complaints;</u>	41141
<u>(c) Seclusion;</u>	41142
<u>(d) Restraint;</u>	41143
<u>(e) Development of written policies addressing the rights of clients, including all of the following:</u>	41144
<u>(i) The right to a copy of the written policies addressing client rights;</u>	41145
<u>(ii) The right at all times to be treated with consideration and respect for the client's privacy and dignity;</u>	41147
<u>(iii) The right to have access to the client's own psychiatric, medical, or other treatment records unless access is specifically restricted in the client's treatment plan for clear treatment reasons;</u>	41148
<u>(iv) The right to have a client rights officer provided by the agency or board of alcohol, drug addiction, and mental health services advise the client of the client's rights, including the client's rights under Chapter 5122. of the Revised Code if the client is committed to the agency or board.</u>	41149
<u>(2) Establish standards for qualifications of mental health professionals as defined in section 340.02 of the Revised Code and personnel who provide the community mental health services;</u>	41150
<u>(3) Establish the process for certification of community mental health services;</u>	41151
<u>(4) Set the amount of certification review fees based on a portion of the cost of performing the review;</u>	41152
<u>(5) Specify the type of notice and hearing to be provided prior to a decision on whether to reallocate funds.</u>	41153
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Sec. 5119.612. The director of mental health shall require 41169
that each board of alcohol, drug addiction, and mental health 41170
services ensure that each community mental health agency with 41171
which it contracts under division (A)(8)(a) of section 340.03 of 41172
the Revised Code to provide community mental health services 41173
establish grievance procedures consistent with rules adopted under 41174
section 5119.611 of the Revised Code that are available to all 41175
applicants for and clients of the community mental health 41176
services. 41177

Sec. 5122.31. All certificates, applications, records, and 41178
reports made for the purpose of this chapter and sections 2945.38, 41179
2945.39, 2945.40, 2945.401, and 2945.402 of the Revised Code, 41180
other than court journal entries or court docket entries, and 41181
directly or indirectly identifying a patient or former patient or 41182
person whose hospitalization has been sought under this chapter, 41183
shall be kept confidential and shall not be disclosed by any 41184
person except: 41185

(A) If the person identified, or the person's legal guardian, 41186
if any, or if the person is a minor, the person's parent or legal 41187
guardian, consents, and if the disclosure is in the best interests 41188
of the person, as may be determined by the court for judicial 41189
records and by the chief clinical officer for medical records; 41190
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(B) When disclosure is provided for in this chapter or 41192
section 5123.60 of the Revised Code; 41193

(C) That hospitals, boards of alcohol, drug addiction, and 41194
mental health services, and community mental health agencies may 41195
release necessary medical information to insurers and other 41196
third-party payers, including government entities responsible for 41197
processing and authorizing payment, to obtain payment for goods 41198
and services furnished to the patient; 41199

(D) Pursuant to a court order signed by a judge; 41200

(E) That a patient shall be granted access to the patient's 41201
own psychiatric and medical records, unless access specifically is 41202
restricted in a patient's treatment plan for clear treatment 41203
reasons; 41204

(F) That hospitals and other institutions and facilities 41205
within the department of mental health may exchange psychiatric 41206
records and other pertinent information with other hospitals, 41207
institutions, and facilities of the department, and with community 41208
mental health agencies and boards of alcohol, drug addiction, and 41209
mental health services with which the department has a current 41210
agreement for patient care or services. Records and information 41211
that may be released pursuant to this division shall be limited to 41212
medication history, physical health status and history, financial 41213
status, summary of course of treatment in the hospital, summary of 41214
treatment needs, and a discharge summary, if any. 41215

(G) That a patient's family member who is involved in the 41216
provision, planning, and monitoring of services to the patient may 41217
receive medication information, a summary of the patient's 41218
diagnosis and prognosis, and a list of the services and personnel 41219
available to assist the patient and the patient's family, if the 41220
patient's treating physician determines that the disclosure would 41221
be in the best interests of the patient. No such disclosure shall 41222
be made unless the patient is notified first and receives the 41223
information and does not object to the disclosure. 41224

(H) That community mental health agencies may exchange 41225
psychiatric records and certain other information with the board 41226
of alcohol, drug addiction, and mental health services and other 41227
agencies in order to provide services to a person involuntarily 41228
committed to a board. Release of records under this division shall 41229
be limited to medication history, physical health status and 41230
history, financial status, summary of course of treatment, summary 41231

of treatment needs, and discharge summary, if any. 41232

(I) That information may be disclosed to the executor or the 41233
administrator of an estate of a deceased patient when the 41234
information is necessary to administer the estate; 41235

(J) That records in the possession of the Ohio historical 41236
society may be released to the closest living relative of a 41237
deceased patient upon request of that relative; 41238

(K) That information may be disclosed to staff members of the 41239
appropriate board or to staff members designated by the director 41240
of mental health for the purpose of evaluating the quality, 41241
effectiveness, and efficiency of services and determining if the 41242
services meet minimum standards. Information obtained during such 41243
evaluations shall not be retained with the name of any patient. 41244
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(L) That records pertaining to the patient's diagnosis, 41246
course of treatment, treatment needs, and prognosis shall be 41247
disclosed and released to the appropriate prosecuting attorney if 41248
the patient was committed pursuant to section 2945.38, 2945.39, 41249
2945.40, 2945.401, or 2945.402 of the Revised Code, or to the 41250
attorney designated by the board for proceedings pursuant to 41251
involuntary commitment under this chapter. 41252

(M) That the department of mental health may exchange 41253
psychiatric hospitalization records, other mental health treatment 41254
records, and other pertinent information with the department of 41255
rehabilitation and correction to ensure continuity of care for 41256
inmates who are receiving mental health services in an institution 41257
of the department of rehabilitation and correction. The department 41258
shall not disclose those records unless the inmate is notified, 41259
receives the information, and does not object to the disclosure. 41260
The release of records under this division is limited to records 41261
regarding an inmate's medication history, physical health status 41262

and history, summary of course of treatment, summary of treatment needs, and a discharge summary, if any. 41263
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(N) That a community mental health agency that ceases to operate may transfer to either a community mental health agency that assumes its caseload or to the board of alcohol, drug addiction, and mental health services of the service district in which the patient resided at the time services were most recently provided any treatment records that have not been transferred elsewhere at the patient's request. 41265
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(O) Before records are disclosed pursuant to divisions (C), (F), and (H) of this section, the custodian of the records shall attempt to obtain the patient's consent for the disclosure. No person shall reveal the contents of a medical record of a patient except as authorized by law. 41272
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Sec. 5123.01. As used in this chapter: 41277

(A) "Chief medical officer" means the licensed physician appointed by the managing officer of an institution for the mentally retarded with the approval of the director of mental retardation and developmental disabilities to provide medical treatment for residents of the institution. 41278
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(B) "Chief program director" means a person with special training and experience in the diagnosis and management of the mentally retarded, certified according to division (C) of this section in at least one of the designated fields, and appointed by the managing officer of an institution for the mentally retarded with the approval of the director to provide habilitation and care for residents of the institution. 41283
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(C) "Comprehensive evaluation" means a study, including a sequence of observations and examinations, of a person leading to conclusions and recommendations formulated jointly, with 41290
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dissenting opinions if any, by a group of persons with special 41293
training and experience in the diagnosis and management of persons 41294
with mental retardation or a developmental disability, which group 41295
shall include individuals who are professionally qualified in the 41296
fields of medicine, psychology, and social work, together with 41297
such other specialists as the individual case may require. 41298

(D) "Education" means the process of formal training and 41299
instruction to facilitate the intellectual and emotional 41300
development of residents. 41301

(E) "Habilitation" means the process by which the staff of 41302
the institution assists the resident in acquiring and maintaining 41303
those life skills that enable the resident to cope more 41304
effectively with the demands of the resident's own person and of 41305
the resident's environment and in raising the level of the 41306
resident's physical, mental, social, and vocational efficiency. 41307
Habilitation includes but is not limited to programs of formal, 41308
structured education and training. 41309

(F) "Habilitation center services" means services provided by 41310
a habilitation center certified by the department of mental 41311
retardation and developmental disabilities under section 5123.041 41312
of the Revised Code and covered by the medicaid program pursuant 41313
to rules adopted under section 5111.041 of the Revised Code. 41314

(G) "Health officer" means any public health physician, 41315
public health nurse, or other person authorized or designated by a 41316
city or general health district. 41317

~~(G)~~(H) "Home and community-based services" means 41318
medicaid-funded home and community-based services provided under a 41319
medicaid component the department of mental retardation and 41320
developmental disabilities administers pursuant to section 41321
5111.871 of the Revised Code. 41322

(I) "Indigent person" means a person who is unable, without 41323

substantial financial hardship, to provide for the payment of an attorney and for other necessary expenses of legal representation, including expert testimony.

~~(H)~~(J) "Institution" means a public or private facility, or a part of a public or private facility, that is licensed by the appropriate state department and is equipped to provide residential habilitation, care, and treatment for the mentally retarded.

~~(I)~~(K) "Licensed physician" means a person who holds a valid certificate issued under Chapter 4731. of the Revised Code authorizing the person to practice medicine and surgery or osteopathic medicine and surgery, or a medical officer of the government of the United States while in the performance of the officer's official duties.

~~(J)~~(L) "Managing officer" means a person who is appointed by the director of mental retardation and developmental disabilities to be in executive control of an institution for the mentally retarded under the jurisdiction of the department.

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

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

(O) "Mentally retarded person" means a person having significantly subaverage general intellectual functioning existing concurrently with deficiencies in adaptive behavior, manifested during the developmental period.

~~(L)~~(P) "Mentally retarded person subject to institutionalization by court order" means a person eighteen years of age or older who is at least moderately mentally retarded and

in relation to whom, because of the person's retardation, either 41355
of the following conditions exist: 41356

(1) The person represents a very substantial risk of physical 41357
impairment or injury to self as manifested by evidence that the 41358
person is unable to provide for and is not providing for the 41359
person's most basic physical needs and that provision for those 41360
needs is not available in the community; 41361

(2) The person needs and is susceptible to significant 41362
habilitation in an institution. 41363

~~(M)~~(Q) "A person who is at least moderately mentally 41364
retarded" means a person who is found, following a comprehensive 41365
evaluation, to be impaired in adaptive behavior to a moderate 41366
degree and to be functioning at the moderate level of intellectual 41367
functioning in accordance with standard measurements as recorded 41368
in the most current revision of the manual of terminology and 41369
classification in mental retardation published by the American 41370
association on mental retardation. 41371

~~(N)~~(R) As used in this division, "substantial functional 41372
limitation," "developmental delay," and "established risk" have 41373
the meanings established pursuant to section 5123.011 of the 41374
Revised Code. 41375

"Developmental disability" means a severe, chronic disability 41376
that is characterized by all of the following: 41377

(1) It is attributable to a mental or physical impairment or 41378
a combination of mental and physical impairments, other than a 41379
mental or physical impairment solely caused by mental illness as 41380
defined in division (A) of section 5122.01 of the Revised Code. 41381

(2) It is manifested before age twenty-two. 41382

(3) It is likely to continue indefinitely. 41383

(4) It results in one of the following: 41384

(a) In the case of a person under three years of age, at least one developmental delay or an established risk;

(b) In the case of a person at least three years of age but under six years of age, at least two developmental delays or an established risk;

(c) In the case of a person six years of age 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 sixteen years of age, capacity for economic self-sufficiency.

(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.

~~(O)~~(S) "Developmentally disabled person" means a person with a developmental disability.

~~(P)~~(T) "State institution" means an institution that is tax-supported and under the jurisdiction of the department.

~~(Q)~~(U) "Residence" and "legal residence" have the same meaning as "legal settlement," which is acquired by residing in Ohio for a period of one year without receiving general assistance prior to July 17, 1995, under former Chapter 5113. of the Revised Code, disability assistance under Chapter 5115. of the Revised Code, or assistance from a private agency that maintains records of assistance given. A person having a legal settlement in the state shall be considered as having legal settlement in the assistance area in which the person resides. No adult person coming into this state and having a spouse or minor children residing in another state shall obtain a legal settlement in this

state as long as the spouse or minor children are receiving public 41416
assistance, care, or support at the expense of the other state or 41417
its subdivisions. For the purpose of determining the legal 41418
settlement of a person who is living in a public or private 41419
institution or in a home subject to licensing by the department of 41420
job and family services, the department of mental health, or the 41421
department of mental retardation and developmental disabilities, 41422
the residence of the person shall be considered as though the 41423
person were residing in the county in which the person was living 41424
prior to the person's entrance into the institution or home. 41425
Settlement once acquired shall continue until a person has been 41426
continuously absent from Ohio for a period of one year or has 41427
acquired a legal residence in another state. A woman who marries a 41428
man with legal settlement in any county immediately acquires the 41429
settlement of her husband. The legal settlement of a minor is that 41430
of the parents, surviving parent, sole parent, parent who is 41431
designated the residential parent and legal custodian by a court, 41432
other adult having permanent custody awarded by a court, or 41433
guardian of the person of the minor, provided that: 41434

(1) A minor female who marries shall be considered to have 41435
the legal settlement of her husband and, in the case of death of 41436
her husband or divorce, she shall not thereby lose her legal 41437
settlement obtained by the marriage. 41438

(2) A minor male who marries, establishes a home, and who has 41439
resided in this state for one year without receiving general 41440
assistance prior to July 17, 1995, under former Chapter 5113. of 41441
the Revised Code, disability assistance under Chapter 5115. of the 41442
Revised Code, or assistance from a private agency that maintains 41443
records of assistance given shall be considered to have obtained a 41444
legal settlement in this state. 41445

(3) The legal settlement of a child under eighteen years of 41446
age who is in the care or custody of a public or private child 41447

caring agency shall not change if the legal settlement of the 41448
parent changes until after the child has been in the home of the 41449
parent for a period of one year. 41450

No person, adult or minor, may establish a legal settlement 41451
in this state for the purpose of gaining admission to any state 41452
institution. 41453

~~(R)~~(V)(1) "Resident" means, subject to division (R)(2) of 41454
this section, a person who is admitted either voluntarily or 41455
involuntarily to an institution or other facility pursuant to 41456
section 2945.39, 2945.40, 2945.401, or 2945.402 of the Revised 41457
Code subsequent to a finding of not guilty by reason of insanity 41458
or incompetence to stand trial or under this chapter who is under 41459
observation or receiving habilitation and care in an institution. 41460

(2) "Resident" does not include a person admitted to an 41461
institution or other facility under section 2945.39, 2945.40, 41462
2945.401, or 2945.402 of the Revised Code to the extent that the 41463
reference in this chapter to resident, or the context in which the 41464
reference occurs, is in conflict with any provision of sections 41465
2945.37 to 2945.402 of the Revised Code. 41466

~~(S)~~(W) "Respondent" means the person whose detention, 41467
commitment, or continued commitment is being sought in any 41468
proceeding under this chapter. 41469

~~(T)~~(X) "Working day" and "court day" mean Monday, Tuesday, 41470
Wednesday, Thursday, and Friday, except when such day is a legal 41471
holiday. 41472

~~(U)~~(Y) "Prosecutor" means the prosecuting attorney, village 41473
solicitor, city director of law, or similar chief legal officer 41474
who prosecuted a criminal case in which a person was found not 41475
guilty by reason of insanity, who would have had the authority to 41476
prosecute a criminal case against a person if the person had not 41477
been found incompetent to stand trial, or who prosecuted a case in 41478

which a person was found guilty. 41479

~~(V)~~(Z) "Court" means the probate division of the court of 41480
common pleas. 41481

Sec. 5123.041. (A) As used in this section, "habilitation 41482
center" means a habilitation center certified under division (C) 41483
of this section for the provision of that provides habilitation 41484
center services under section 5111.041 of the Revised Code. 41485

(B) The department of mental retardation and developmental 41486
disabilities shall do all of the following pursuant to an 41487
interagency agreement with the department of job and family 41488
services entered into under section 5111.86 of the Revised Code: 41489

(1) Certify habilitation centers that meet the certification 41490
requirements established by rules adopted by the director of job 41491
and family services under section 5111.041 of the Revised Code; 41492

(2) Accept and process medicaid reimbursement claims from 41493
habilitation centers providing habilitation center services to 41494
medicaid recipients under section 5111.041 of the Revised Code; 41495

(3) With medicaid funds provided to the department from the 41496
department of job and family services, pay the medicaid 41497
reimbursement claims accepted and processed under division (B)(2) 41498
of this section; 41499

(4) Perform the other duties included in the interagency 41500
agreement. 41501

(C) The director of mental retardation and developmental 41502
disabilities shall adopt rules in accordance with Chapter 119. of 41503
the Revised Code that do all of the following: 41504

(1) Specify standards Establish procedures for certification 41505
of habilitation centers; 41506

(2) Define habilitation services and programs, other than 41507

~~services provided by the department of education;~~ 41508

~~(3) Establish the fee that may be assessed under division (D)~~ 41509
~~of this section;~~ 41510

~~(4)(3) Specify how the department of mental retardation and~~ 41511
~~developmental disabilities will implement and administer the~~ 41512
~~habilitation services program perform its duties under this~~ 41513
~~section.~~ 41514

~~(C) The director shall certify habilitation centers that meet~~ 41515
~~the standards specified by rules adopted under this section.~~ 41516

(D) The department of mental retardation and developmental 41517
disabilities may assess the fee established by rule under division 41518
~~(B)(3)(C)(2)~~ of this section for ~~providing services related to the~~ 41519
~~habilitation services program performing its duties under this~~ 41520
section. The fee may be retained from any funds payment the 41521
department ~~receives for a habilitation center under Title XIX of~~ 41522
~~the "Social Security Act," 49 Stat. 620 (1935), 42 U.S.C.A. 301,~~ 41523
~~as amended makes under division (B)(3) of this section.~~ 41524

Sec. 5123.043. (A) The director of mental retardation and 41525
developmental disabilities shall adopt rules establishing 41526
procedures for administrative resolution of complaints filed under 41527
division (B) of this section and section 5126.06 of the Revised 41528
Code. The rules shall be adopted in accordance with Chapter 119. 41529
of the Revised Code. 41530

(B) Except as provided in division (C) of this section, any 41531
person who has a complaint involving any of the programs, 41532
services, policies, or administrative practices of the department 41533
of mental retardation and developmental disabilities or any of the 41534
entities under contract with the department, may file a complaint 41535
with the department. Prior to commencing a civil action regarding 41536
the complaint, a person shall attempt to have the complaint 41537
resolved through the administrative resolution process established 41538

in the rules adopted under this section. After exhausting the
administrative resolution process, the person may commence a civil
action if the complaint is not settled to the person's
satisfaction.

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

(D) This section does not apply to 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. Section 5126.036 of the Revised Code
applies to such a conflict.

Sec. 5123.044. The department of mental retardation and
developmental disabilities shall determine whether county boards
of mental retardation and developmental disabilities are in
compliance with section 5126.046 of the Revised Code. The
department shall provide assistance to an individual with mental
retardation or other developmental disability who requests
assistance with the individual's right under section 5126.046 of
the Revised Code to choose a provider of habilitation, vocational,
community employment, residential, or supported living services if
the department is notified of a county board's alleged violation
of the individual's right to choose such a provider.

Sec. 5123.045. (A) No person or government entity shall
receive payment for providing home and community-based services
unless the person or government entity is one of the following:

(1) Certified under this section;

(2) Certified as a supported living provider under section
5126.431 of the Revised Code;

(3) Licensed as a residential facility under section 5123.19 of the Revised Code. Division (A)(3) of this section does not apply to an intermediate care facility for the mentally retarded as defined in section 5111.20 of the Revised Code. 41569
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(B) The department of mental retardation and developmental disabilities shall do all of the following in accordance with Chapter 119. of the Revised Code: 41573
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(1) Certify a person or government entity to provide home and community-based services if the person or government entity satisfies the requirements for certification established by rules adopted under division (C) of this section; 41576
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(2) Revoke a certificate when required to do so by rules adopted under division (C) of this section; 41580
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(3) Hold hearings when there is a dispute between the department and a person or government entity concerning actions the department takes or does not take under division (B)(1) or (2) of this section. 41582
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(C) The director of mental retardation and developmental disabilities shall adopt rules in accordance with Chapter 119. of the Revised Code establishing certification requirements and procedures for a person or government entity that seeks to provide home and community-based services and is not certified as a supported living provider under section 5126.431 of the Revised Code or licensed as a residential facility under section 5123.19 of the Revised Code. The rules shall specify the program areas for which certification is required and include procedures for all of the following: 41586
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(1) Ensuring that providers comply with section 5126.28 or 5126.281 of the Revised Code, as appropriate; 41596
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(2) Evaluating the services provided to ensure that they are provided in a quality manner advantageous to the individual 41598
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receiving the services. The procedures shall require that all of 41600
the following be considered as part of an evaluation: 41601

(a) The provider's experience and financial responsibility; 41602
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(b) The provider's ability to comply with standards for the 41604
home and community-based services that the provider provides; 41605

(c) The provider's ability to meet the needs of the 41606
individuals served; 41607

(d) Any other factor the director considers relevant. 41608

(3) Determining when to revoke a provider's certificate. The 41609
reasons for which a certificate may be revoked may include good 41610
cause, including misfeasance, malfeasance, nonfeasance, confirmed 41611
abuse or neglect, financial irresponsibility, or other conduct the 41612
director determines is injurious to individuals being served. 41613
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(D) The records of an evaluation conducted in accordance with 41615
rules adopted under division (C)(2) of this section are public 41616
records for purposes of section 149.43 of the Revised Code and 41617
shall be made available on request of any person, including 41618
individuals being served, individuals seeking home and 41619
community-based services, and county boards of mental retardation 41620
and developmental disabilities. 41621

Sec. 5123.046. The department of mental retardation and 41622
developmental disabilities shall review each plan it receives from 41623
a county board of mental retardation and developmental 41624
disabilities under section 5126.054 of the Revised Code and, in 41625
consultation with the department of job and family services and 41626
office of budget and management, approve each plan that includes 41627
all the information and conditions specified in that section. A 41628
plan shall be approved or disapproved not later than forty-five 41629

days after the last of the plan's components are submitted to the 41630
department under division (B) of section 5126.054 of the Revised 41631
Code. 41632

In approving plans under this section, the department shall 41633
ensure that the aggregate of all plans provide for the increased 41634
enrollment into home and community-based services during each 41635
state fiscal year of at least five hundred individuals who did not 41636
receive residential services, supported living, or home and 41637
community-based services the prior state fiscal year if the 41638
department has enough additional enrollment available for this 41639
purpose. 41640

If a county board fails to submit all the components of the 41641
plan to the department within the time required by division (B) of 41642
section 5126.054 of the Revised Code or the department disapproves 41643
a county board's plan, the department may withhold all or part of 41644
any funds the department would otherwise allocate to the county 41645
board. The department may not withhold any funds the department 41646
allocates to the county board prior to the date the last of the 41647
plan's components are due or the department disapproves the plan. 41648

The department shall establish protocols that the department 41649
shall use to determine whether a county board is complying with 41650
the programmatic and financial accountability mechanisms and 41651
achieving outcomes specified in its approved plan. If the 41652
department determines that a county board is not in compliance 41653
with the mechanisms or achieving the outcomes specified in its 41654
approved plan, the department may take action under division (G) 41655
of section 5126.055 of the Revised Code. 41656

Sec. 5123.047. (A) The department of mental retardation and 41657
developmental disabilities shall pay the nonfederal share of 41658
medicaid expenditures for habilitation center services provided to 41659
an individual with mental retardation or other developmental 41660

disability unless section 5111.041 of the Revised Code requires a 41661
county board of mental retardation and developmental disabilities 41662
or a school district to pay the nonfederal share. 41663

(B) The department shall pay the nonfederal share of medicaid 41664
expenditures for medicaid case management services if either of 41665
the following apply: 41666

(1) The services are provided to an individual with mental 41667
retardation or other developmental disability who a county board 41668
has determined under section 5126.041 of the Revised Code is not 41669
eligible for county board services; 41670

(2) The services are provided to an individual with mental 41671
retardation or other developmental disability by a public or 41672
private agency with which the department has contracted under 41673
section 5123.56 of the Revised Code to provide protective services 41674
to the individual. 41675

(C) The department shall pay the nonfederal share of medicaid 41676
expenditures for home and community-based services if either of 41677
the following apply: 41678

(1) The services are provided to an individual with mental 41679
retardation or other developmental disability who a county board 41680
has determined under section 5126.041 of the Revised Code is not 41681
eligible for county board services; 41682

(2) The services are provided to an individual with mental 41683
retardation or other developmental disability given priority for 41684
the services pursuant to division (D)(3) of section 5126.042 of 41685
the Revised Code. The department shall pay the nonfederal share of 41686
medicaid expenditures for home and community-based services 41687
provided to such an individual for as long as the individual 41688
continues to be eligible for and receive the services, regardless 41689
of whether the services are provided after June 30, 2003. 41690

Sec. 5123.048. (A) For state fiscal year 2002, the department 41691
of mental retardation and developmental disabilities shall assign 41692
to a county board of mental retardation and developmental 41693
disabilities the nonfederal share of medicaid expenditures for 41694
habilitation center services that a private habilitation center 41695
provides if all of the following apply: 41696

(1) The individuals who receive the services also received 41697
the services from the center pursuant to a contract the center had 41698
with the department in state fiscal year 2001; 41699

(2) The county board determined under section 5126.041 of the 41700
Revised Code that the individuals who receive the services are 41701
eligible for county board services; 41702

(3) The county board contracts with the center to provide the 41703
services after the center's contract with the department ends. 41704

(B) The department shall also make the assignment under 41705
division (A) of this section for each successive state fiscal year 41706
that the county board contracts with the private habilitation 41707
center to provide the habilitation center services to the 41708
individuals who received the services pursuant to the contract the 41709
department had with the center in state fiscal year 2001. 41710

(C) The amount the department shall assign under divisions 41711
(A) and (B) of this section shall be adequate to ensure that the 41712
habilitation center services the individuals receive are 41713
comparable in scope to the habilitation center services they 41714
received when the private habilitation center was under contract 41715
with the department. The amount that the department assigns shall 41716
not be less than the amount the department paid the private 41717
habilitation center for the individuals under the contract the 41718
department had with the center in fiscal year 2001. 41719

(D) A county board shall use the assignment it receives under 41720

divisions (A) and (B) of this section to pay the nonfederal share 41721
of the medicaid expenditures for the habilitation center services 41722
the county board is required by division (D) of section 5111.041 41723
of the Revised Code to pay. 41724

Sec. 5123.049. The director of mental retardation and 41725
developmental disabilities shall adopt rules in accordance with 41726
Chapter 119. of the Revised Code governing the authorization and 41727
payment of home and community-based services, medicaid case 41728
management services, and habilitation center services. The rules 41729
shall provide for private providers of the services to receive one 41730
hundred per cent of the medicaid allowable payment amount and for 41731
government providers of the services to receive the federal share 41732
of the medicaid allowable payment, less the amount withheld as a 41733
fee under section 5123.0412 of the Revised Code and any amount 41734
that may be required by rules adopted under section 5123.0413 of 41735
the Revised Code to be deposited into the state MR/DD risk fund. 41736
The rules shall establish the process by which county boards of 41737
mental retardation and developmental disabilities shall certify 41738
and provide the nonfederal share of medicaid expenditures that the 41739
county board is required by division (A) of section 5126.056 of 41740
the Revised Code to pay. The process shall require a county board 41741
to certify that the county board has funding available at one time 41742
for two months costs for those expenditures. The process may 41743
permit a county board to certify that the county board has funding 41744
available at one time for more than two months costs for those 41745
expenditures. 41746

Sec. 5123.0410. An individual with mental retardation or 41747
other developmental disability who moves from one county in this 41748
state to another county in this state shall receive home and 41749
community-based services in the new county that are comparable in 41750
scope to the home and community-based services the individual 41751

receives in the prior county at the time the individual moves. If 41752
the county board serving the county to which the individual moves 41753
determines under section 5126.041 of the Revised Code that the 41754
individual is eligible for county board services, the county board 41755
shall ensure that the individual receives the comparable services. 41756
If the county board determines that the individual is not eligible 41757
for county board services, the department of mental retardation 41758
and developmental disabilities shall ensure that the individual 41759
receives the comparable services. 41760

If the home and community-based services that the individual 41761
receives at the time the individual moves include supported living 41762
or residential services, the department shall reduce the amount 41763
the department allocates to the county board serving the county 41764
the individual left for those supported living or residential 41765
services by an amount that equals the payment the department 41766
authorizes or projects, or both, for those supported living or 41767
residential services from the last day the individual resides in 41768
the county to the last day of the state fiscal year in which the 41769
individual moves. The department shall increase the amount the 41770
department allocates to the county board serving the county the 41771
individual moves to by the same amount. The department shall make 41772
the reduction and increase effective the day the department 41773
determines the individual has residence in the new county. The 41774
department shall determine the amount that is to be reduced and 41775
increased in accordance with the department's rules for 41776
authorizing payments for home and community-based services 41777
established adopted under section 5123.049 of the Revised Code. 41778
The department shall annualize the reduction and increase for the 41779
subsequent state fiscal year as necessary. 41780

Sec. 5123.0411. The department of mental retardation and 41781
developmental disabilities may bring a mandamus action against a 41782
county board of mental retardation and developmental disabilities 41783

that fails to pay the nonfederal share of medicaid expenditures 41784
that the county board is required by division (A) of section 41785
5126.056 of the Revised Code to pay. The department may bring the 41786
mandamus action in the court of common pleas of the county served 41787
by the county board or in the Franklin county court of common 41788
pleas. 41789

Sec. 5123.0412. (A) The department of mental retardation and 41790
developmental disabilities shall charge each county board of 41791
mental retardation and developmental disabilities an annual fee 41792
equal to one per cent of the total value of all medicaid paid 41793
claims for medicaid case management services and home and 41794
community-based services for which the county board contracts or 41795
provides itself. No county board shall pass the cost of a fee 41796
charged to the county board under this section on to a person or 41797
government entity with which the county board contracts to provide 41798
the services. 41799

(B) The fees collected under this section shall be deposited 41800
into the ODMR/DD administration and oversight fund and the ODJFS 41801
administration and oversight fund, both of which are hereby 41802
created in the state treasury. The portion of the fees to be 41803
deposited into the ODMR/DD administration and oversight fund and 41804
the portion of the fees to be deposited into the ODJFS 41805
administration and oversight fund shall be the portion specified 41806
in an interagency agreement entered into under division (C) of 41807
this section. The department of mental retardation and 41808
developmental disabilities shall use the money in the ODMR/DD 41809
administration and oversight fund and the department of job and 41810
family services shall use the money in the ODJFS administration 41811
and oversight fund for both of the following purposes: 41812

(1) The administrative and oversight costs of habilitation 41813
center services, medicaid case management services, and home and 41814

community-based services that a county board develops and monitors 41815
and the county board or a person or government entity under 41816
contract with the county board provides. The administrative and 41817
oversight costs shall include costs for staff, systems, and other 41818
resources the departments need and dedicate solely to the 41819
following duties associated with the services: 41820

(a) Eligibility determinations; 41821

(b) Training; 41822

(c) Fiscal management; 41823

(d) Claims processing; 41824

(e) Quality assurance oversight; 41825

(f) Other duties the departments identify. 41826

(2) Providing technical support to county boards' local 41827
administrative authority under section 5126.055 of the Revised 41828
Code for the services. 41829

(C) The departments of mental retardation and developmental 41830
disabilities and job and family services shall enter into an 41831
interagency agreement to do both of the following: 41832

(1) Specify which portion of the fees collected under this 41833
section is to be deposited into the ODMR/DD administration and 41834
oversight fund and which portion is to be deposited into the ODJFS 41835
administration and oversight fund; 41836

(2) Provide for the departments to coordinate the staff whose 41837
costs are paid for with money in the ODMR/DD administration and 41838
oversight fund and the ODJFS administration and oversight fund. 41839
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(D) The departments shall submit an annual report to the 41841
director of budget and management certifying how the departments 41842
spent the money in the ODMR/DD administration and oversight fund 41843

and the ODJFS administration and oversight fund for the purposes 41844
specified in division (B) of this section. 41845

Sec. 5123.0413. (A) The department of mental retardation and 41846
developmental disabilities, in consultation with the department of 41847
job and family services, office of budget and management, and 41848
county boards of mental retardation and developmental 41849
disabilities, shall adopt rules in accordance with Chapter 119. of 41850
the Revised Code no later than January 1, 2002, establishing a 41851
method of paying for extraordinary costs, including extraordinary 41852
costs for services to individuals with mental retardation or other 41853
developmental disability, and ensure the availability of adequate 41854
funds in the event a county property tax levy for services for 41855
individuals with mental retardation or other developmental 41856
disability fails. The rules may provide for using and managing one 41857
or more of the following: 41858

(1) County MR/DD medicaid reserve funds established in 41859
accordance with section 5705.091 of the Revised Code; 41860

(2) A state MR/DD risk fund, which is hereby created in the 41861
state treasury; 41862

(3) A state insurance against MR/DD risk fund, which is 41863
hereby created in the state treasury. 41864

(B) Beginning January 1, 2002, the department of job and 41865
family services may not request approval from the United States 41866
secretary of health and human services to increase the number of 41867
slots for home and community-based services until the rules 41868
required by division (A) of this section are in effect. 41869

Sec. 5123.082. (A) The director of mental retardation and 41870
developmental disabilities shall adopt rules in accordance with 41871
Chapter 119. of the Revised Code: 41872

(1) Designating positions of employment for which the director determines that certification or evidence of registration is required as a condition of employment in the department of mental retardation and developmental disabilities, entities that contract with the department or county boards of mental retardation and developmental disabilities to operate programs or provide services to persons with mental retardation and developmental disabilities, or other positions of employment in programs that serve those persons⁷. The rules shall designate the position of investigative agent, as defined in section 5126.20 of the Revised Code, as a position for which certification is required.

(2) Establishing levels of certification or registration for each position for which certification or registration is required;

(3) Establishing for each level of each position the requirements that must be met to obtain certification or registration, including standards regarding education, specialized training, and experience. The standards shall take into account the nature and needs of persons with mental retardation or a developmental disability and the specialized techniques needed to serve them. The requirements for an investigative agent shall be the same as the certification requirements for an investigative agent under section 5126.25 of the Revised Code.

(4) Establishing renewal schedules and renewal requirements for certification and registration, including standards regarding education, specialized training, and experience⁷. The renewal requirements for an investigative agent shall be the same as the renewal requirements for an investigative agent under section 5126.25 of the Revised Code.

(5) Establishing procedures for denial, suspension, and revocation of a certificate or evidence of registration, including appeal procedures;

(6) Establishing other requirements needed to carry out this section. 41905
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(B) The director shall issue, renew, deny, suspend, or revoke a certificate or evidence of registration in accordance with rules adopted under this section. The director shall deny, suspend, or revoke a certificate or evidence of registration if the director finds, pursuant to an adjudication conducted in accordance with Chapter 119. of the Revised Code, that an applicant for or holder of a certificate or evidence of registration is guilty of intemperate, immoral, or other conduct unbecoming to the applicant's or holder's position, or is guilty of incompetence or negligence within the scope of the applicant's or holder's duties. The director shall deny or revoke a certificate or evidence of registration after the director finds, pursuant to an adjudication conducted in accordance with Chapter 119. of the Revised Code, that the applicant for or holder of the certificate or evidence of registration has been convicted of or pleaded guilty to any of the offenses listed or described in division (E) of section 5126.28 of the Revised Code, unless the individual meets standards for rehabilitation that the director establishes in the rules adopted under that section. Evidence supporting such allegations must be presented to the director in writing, and the director shall provide prompt notice of the allegations to the person who is the subject of the allegations. A denial, suspension, or revocation may be appealed in accordance with the procedures established in rules adopted under this section. 41907
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(C) A person holding a valid certificate or evidence of registration under this section on the effective date of any rules adopted under this section that increase the certification or registration standards shall have the period that the rules prescribe, but not less than one year after the effective date of 41932
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the rules, to meet the new standards.

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(D) No person shall be employed in a position for which certification or registration is required under rules adopted under this section, unless the person holds a valid certificate or evidence of registration for the position.

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Sec. 5123.60. (A) A legal rights service is hereby created and established to protect and advocate the rights of mentally ill persons, mentally retarded persons, developmentally disabled persons, and other disabled persons who may be represented by the service pursuant to division (L) of this section; to receive and act upon complaints concerning institutional and hospital practices and conditions of institutions for mentally retarded or developmentally disabled persons and hospitals for the mentally ill; and to assure that all persons detained, hospitalized, discharged, or institutionalized, and all persons whose detention, hospitalization, discharge, or institutionalization is sought or has been sought under this chapter or Chapter 5122. of the Revised Code are fully informed of their rights and adequately represented by counsel in proceedings under this chapter or Chapter 5122. of the Revised Code and in any proceedings to secure the rights of ~~such~~ those persons. Notwithstanding the definitions of "mentally retarded person" and "developmentally disabled person" in section 5123.01 of the Revised Code, the legal rights service shall determine who is a mentally retarded or developmentally disabled person for purposes of this section and sections 5123.601 to 5123.604 of the Revised Code.

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(B) In regard to those persons detained, hospitalized, or institutionalized under Chapter 5122. of the Revised Code, the legal rights service shall undertake formal representation only of those persons who are involuntarily detained, hospitalized, or institutionalized pursuant to sections 5122.10 to 5122.15 of the

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Revised Code, and those voluntarily detained, hospitalized, or 41968
institutionalized who are minors, who have been adjudicated 41969
incompetent, who have been detained, hospitalized, or 41970
institutionalized in a public hospital, or who have requested 41971
representation by the legal rights service. If a person referred 41972
to in division (A) of this section voluntarily requests in writing 41973
that the legal rights service terminate participation in the 41974
person's case, such involvement shall cease. 41975

(C) Any person voluntarily hospitalized or institutionalized 41976
in a public hospital under division (A) of section 5122.02 of the 41977
Revised Code, after being fully informed of the person's rights 41978
~~pursuant to~~ under division (A) of this section, may, by written 41979
request, waive assistance by the legal rights service if the 41980
waiver is knowingly and intelligently made, without duress or 41981
coercion. 41982

The waiver may be rescinded at any time by the voluntary 41983
patient or resident, or by the voluntary patient's or resident's 41984
legal guardian. 41985

(D)(1) The legal rights service commission is hereby created 41986
for the purposes of appointing an administrator of the legal 41987
rights service, advising the administrator, assisting the 41988
administrator in developing a budget, and establishing general 41989
policy guidelines for the legal rights service. The commission may 41990
receive and act upon appeals of personnel decisions by the 41991
administrator. 41992

(2) The commission shall consist of seven members. One 41993
member, who shall serve as chairperson, shall be appointed by the 41994
chief justice of the supreme court, three members shall be 41995
appointed by the speaker of the house of representatives, and 41996
three members shall be appointed by the president of the senate. 41997
At least two members shall have experience in the field of 41998
developmental disabilities, and at least two members shall have 41999

experience in the field of mental health. No member shall be a 42000
provider or related to a provider of services to mentally 42001
retarded, developmentally disabled, or mentally ill persons. ~~Terms~~ 42002

(3) Terms of office of the members of the commission shall be 42003
for three years, each term ending on the same day of the month of 42004
the year as did the term which it succeeds. Each member shall 42005
serve subsequent to the expiration of the member's term until a 42006
successor is appointed and qualifies, or until sixty days has 42007
elapsed, whichever occurs first. ~~All~~ No member shall serve more 42008
than two consecutive terms. 42009

All vacancies in the membership of the commission shall be 42010
filled in the manner prescribed for the regular appointments to 42011
the commission and shall be limited to the unexpired terms. ~~No~~ 42012
~~member shall serve more than two consecutive terms.~~ 42013

(4) The commission shall meet at least four times each year. 42014
Members shall be reimbursed for their necessary and actual 42015
expenses incurred in the performance of their official duties. 42016

(5) The administrator of the legal rights service shall be 42017
appointed for a five-year term, subject to removal for mental or 42018
physical incapacity to perform the duties of the office, 42019
conviction of violation of any law relating to the administrator's 42020
powers and duties, or other good cause shown. 42021

The administrator shall be a person who has had special 42022
training and experience in the type of work with which the legal 42023
rights service is charged. If the administrator is not an 42024
attorney, the administrator shall seek legal counsel when 42025
appropriate. The salary of the administrator shall be established 42026
in accordance with section 124.14 of the Revised Code. 42027

(E) The legal rights service shall be completely independent 42028
of the department of mental health and the department of mental 42029
retardation and developmental disabilities and, notwithstanding 42030

section 109.02 of the Revised Code, shall also be independent of 42031
the office of the attorney general. The administrator of the legal 42032
rights service, staff, and attorneys designated by the 42033
administrator to represent persons detained, hospitalized, or 42034
institutionalized under this chapter or Chapter 5122. of the 42035
Revised Code shall have ready access to the following: 42036

(1) During normal business hours and at other reasonable 42037
times, ~~to~~ all records relating to expenditures of state and 42038
federal funds or to the commitment, care, treatment, and 42039
habilitation of all persons represented by the legal rights 42040
service, including those who may be represented pursuant to 42041
division (L) of this section, or persons detained, hospitalized, 42042
institutionalized, or receiving services under this chapter or 42043
Chapter 340., 5119., 5122., or 5126. of the Revised Code that are 42044
records maintained by the following entities providing services 42045
for those persons: departments; institutions; hospitals; community 42046
residential facilities; boards of alcohol, drug addiction, and 42047
mental health services; county boards of mental retardation and 42048
developmental disabilities; contract agencies of those boards; and 42049
any other entity providing services to persons who may be 42050
represented by the service pursuant to division (L) of this 42051
section; 42052

(2) ~~To any~~ Any records maintained in computerized data banks 42053
of the departments or boards or, in the case of persons who may be 42054
represented by the service pursuant to division (L) of this 42055
section, any other entity that provides services to those persons; 42056

(3) During their normal working hours, ~~to~~ personnel of the 42057
departments, facilities, boards, agencies, institutions, 42058
hospitals, and other service-providing entities; 42059

(4) At any time, ~~to~~ all persons detained, hospitalized, or 42060
institutionalized; persons receiving services under this chapter 42061
or Chapter 340., 5119., 5122., or 5126. of the Revised Code; and 42062

persons who may be represented by the service pursuant to division 42063
(L) of this section. 42064

(F) The administrator of the legal rights service shall do 42065
the following: 42066

(1) Administer and organize the work of the legal rights 42067
service and establish administrative or geographic divisions as 42068
the administrator considers necessary, proper, and expedient; 42069

(2) Adopt and promulgate rules and prescribe duties for the 42070
efficient conduct of the business and general administration of 42071
the legal rights service; 42072

(3) Appoint and discharge employees, and hire ~~such~~ experts, 42073
consultants, advisors, or other professionally qualified persons 42074
as the administrator considers necessary to carry out the duties 42075
of the legal rights service; 42076

(4) Apply for and accept grants of funds, and accept 42077
charitable gifts and bequests; 42078

(5) Prepare and submit a budget to the general assembly for 42079
the operation of the legal rights service; 42080

(6) Enter into contracts and make ~~such~~ expenditures ~~as are~~ 42081
necessary for the efficient operation of the legal rights service; 42082

(7) Annually prepare a report of activities and submit copies 42083
of the report to the governor, the chief justice of the supreme 42084
court, the president of the senate, the speaker of the house of 42085
representatives, the director of mental health, and the director 42086
of mental retardation and developmental disabilities, and make the 42087
report available to the public. 42088

(G)(1) The legal rights service may act directly or contract 42089
with other organizations or individuals for the provision of the 42090
services envisioned under this section. ~~Whenever~~ 42091

(2) Whenever possible, the administrator shall attempt to 42092

facilitate the resolution of complaints through administrative channels. ~~If~~ Subject to division (G)(3) of this section, if attempts at administrative resolution prove unsatisfactory, the administrator may pursue any legal, administrative, and other appropriate remedies or approaches that may be necessary to accomplish the purposes of this section. ~~Relationships~~

(3) The administrator may not pursue a class action lawsuit under division (G)(2) of this section when attempts at administrative resolution of a complaint prove unsatisfactory under that division unless both of the following have first occurred:

(a) At least four members of the commission, by their affirmative vote, have consented to the pursuit of the class action lawsuit;

(b) At least five members of the commission are present at the meeting of the commission at which that consent is obtained.

(4) Relationships between personnel and the agents of the legal rights service and its clients shall be fiduciary relationships, and all communications shall be confidential, as if between attorney and client.

(H) The legal rights service, on the order of the administrator, with the approval by an affirmative vote of at least four members of the commission, may compel by subpoena the appearance and sworn testimony of any person the administrator reasonably believes may be able to provide information or to produce any documents, books, records, papers, or other information necessary to carry out its duties.

(I) The legal rights service may conduct public hearings.

(J) The legal rights service may request from any governmental agency any cooperation, assistance, services, or data that will enable it to perform its duties.

(K) In any malpractice action filed against the administrator 42124
of the legal rights service, a member of the staff of the legal 42125
rights service, or an attorney designated by the administrator to 42126
perform legal services under division (E) of this section, the 42127
state shall, when the administrator, member, or attorney has acted 42128
in good faith and in the scope of employment, indemnify the 42129
administrator, member, or attorney for any judgment awarded or 42130
amount negotiated in settlement, and for any court costs or legal 42131
fees incurred in defense of the claim. 42132

This division does not limit or waive, and shall not be 42133
construed to limit or waive, any defense that is available to the 42134
legal rights service, its administrator or employees, persons 42135
under a personal services contract with it, or persons designated 42136
under division (E) of this section, including, but not limited to, 42137
any defense available under section 9.86 of the Revised Code. 42138

(L) In addition to providing services to mentally ill, 42139
mentally retarded, or developmentally disabled persons, when a 42140
grant authorizing the provision of services to other individuals 42141
is accepted pursuant to division (F)(4) of this section, the legal 42142
rights service and its ombudsperson section may provide advocacy 42143
or ombudsperson services to those other individuals and exercise 42144
any other authority granted by this section or sections 5123.601 42145
to 5123.604 of the Revised Code on behalf of those individuals. 42146
Determinations of whether an individual is eligible for services 42147
under this division shall be made by the legal rights service. 42148

Sec. 5123.71. (A)(1) Proceedings for the involuntary 42149
institutionalization of a person pursuant to sections 5123.71 to 42150
5123.76 of the Revised Code shall be commenced by the filing of an 42151
affidavit with the probate division of the court of common pleas 42152
of the county where the person ~~person's is located~~ resides or 42153
where the person is institutionalized, in the manner and form 42154

prescribed by the department of mental retardation and 42155
developmental disabilities either on information or actual 42156
knowledge, whichever is determined to be proper by the court. The 42157
affidavit may be filed only by a person who has custody of the 42158
individual as a parent, guardian, or service provider or by a 42159
person acting on behalf of the department or a county board of 42160
mental retardation and developmental disabilities. This section 42161
does not apply regarding the institutionalization of a person 42162
pursuant to section 2945.39, 2945.40, 2945.401, or 2945.402 of the 42163
Revised Code. 42164

The affidavit shall contain an allegation setting forth the 42165
specific category or categories under division ~~(L)~~(P) of section 42166
5123.01 of the Revised Code upon which the commencement of 42167
proceedings is based and a statement of the factual ground for the 42168
belief that the person is a mentally retarded person subject to 42169
institutionalization by court order. Except as provided in 42170
division (A)(2) of this section, the affidavit shall be 42171
accompanied by both of the following: 42172

(a) A comprehensive evaluation report prepared by the 42173
person's evaluation team that includes a statement by the members 42174
of the team certifying that they have performed a comprehensive 42175
evaluation of the person and that they are of the opinion that the 42176
person is a mentally retarded person subject to 42177
institutionalization by court order; 42178

(b) An assessment report prepared by the county board of 42179
mental retardation and developmental disabilities under section 42180
5123.711 of the Revised Code specifying that the individual is in 42181
need of services on an emergency or priority basis. 42182

(2) ~~A~~ In lieu of the comprehensive evaluation report, the 42183
affidavit may be accompanied by a written and sworn statement that 42184
the person or the guardian of a person adjudicated incompetent has 42185
refused to allow a comprehensive evaluation and county board 42186

assessment and assessment reports. Immediately after accepting an affidavit that is not accompanied by the reports of a comprehensive evaluation and county board assessment, the court shall cause a comprehensive evaluation and county board assessment of the person named in the affidavit to be performed. The evaluation shall be conducted in the least restrictive environment possible and the assessment shall be conducted in the same manner as assessments conducted under section 5123.711 of the Revised Code. The evaluation and assessment must be completed before a probable cause hearing or full hearing may be held under section 5123.75 or 5123.76 of the Revised Code.

A written report of the evaluation team's findings and the county board's assessment shall be filed with the court. The reports shall, consistent with the rules of evidence, be accepted as probative evidence in any proceeding under section 5123.75 or 5123.76 of the Revised Code. If the counsel for the person who is evaluated or assessed is known, the court shall send to the counsel a copy of the reports as soon as possible after they are filed and prior to any proceedings under section 5123.75 or 5123.76 of the Revised Code.

(B) ~~, if the division may the,,~~ Any person who is involuntarily detained in an institution or otherwise is in custody under this chapter shall be informed ~~the person~~ of the right to do the following:

(1) Immediately make a reasonable number of telephone calls or use other reasonable means to contact an attorney, a physician, or both, to contact any other person or persons to secure representation by counsel, or to obtain medical assistance, and be provided assistance in making calls if the assistance is needed and requested;

(2) Retain counsel and have independent expert evaluation and, if the person is an indigent person, be represented by

court-appointed counsel and have independent expert evaluation at 42219
court expense; 42220

(3) Upon request, have a hearing to determine whether there 42221
is probable cause to believe that the person is a mentally 42222
retarded person subject to institutionalization by court order. 42223

(C) No person who is being treated by spiritual means through 42224
prayer alone in accordance with a recognized religious method of 42225
healing may be ordered detained or involuntarily committed unless 42226
the court has determined that the person represents a very 42227
substantial risk of self-impairment, self-injury, or impairment or 42228
injury to ~~self~~ to others. 42229

Sec. 5123.76. (A) The full hearing shall be conducted in a 42230
manner consistent with the procedures outlined in this chapter and 42231
with due process of law. The hearing shall be held by a judge of 42232
the probate division or, upon transfer by the judge of the probate 42233
division, by another judge of the court of common pleas, or a 42234
referee designated by the judge of the probate division. Any 42235
referee designated by the judge of the probate division must be an 42236
attorney. 42237

(1) The following shall be made available to counsel for the 42238
respondent: 42239

(a) All relevant documents, information, and evidence in the 42240
custody or control of the state or prosecutor; 42241

(b) All relevant documents, information, and evidence in the 42242
custody or control of the institution, facility, or program in 42243
which the respondent currently is held or in which the respondent 42244
has been held pursuant to these proceedings; 42245

(c) With the consent of the respondent, all relevant 42246
documents, information, and evidence in the custody or control of 42247
any institution or person other than the state. 42248

(2) The respondent has the right to be represented by counsel 42249
of the respondent's choice and has the right to attend the hearing 42250
except if unusual circumstances of compelling medical necessity 42251
exist that render the respondent unable to attend and the 42252
respondent has not expressed a desire to attend. 42253

(3) If the respondent is not represented by counsel and the 42254
court determines that the conditions specified in division (A)(2) 42255
of this section justify the respondent's absence and the right to 42256
counsel has not been validly waived, the court shall appoint 42257
counsel forthwith to represent the respondent at the hearing, 42258
reserving the right to tax costs of appointed counsel to the 42259
respondent unless it is shown that the respondent is indigent. If 42260
the court appoints counsel, or if the court determines that the 42261
evidence relevant to the respondent's absence does not justify the 42262
absence, the court shall continue the case. 42263

(4) The respondent shall be informed of the right to retain 42264
counsel, to have independent expert evaluation, and, if an 42265
indigent person, to be represented by court appointed counsel and 42266
have expert independent evaluation at court expense. 42267

(5) The hearing may be closed to the public unless counsel 42268
for the respondent requests that the hearing be open to the 42269
public. 42270

(6) Unless objected to by the respondent, the respondent's 42271
counsel, or the designee of the director of mental retardation and 42272
developmental disabilities, the court, for good cause shown, may 42273
admit persons having a legitimate interest in the proceedings. 42274

(7) The affiant under section 5123.71 of the Revised Code 42275
shall be subject to subpoena by either party. 42276

(8) The court shall examine the sufficiency of all documents 42277
filed and shall inform the respondent, if present, and the 42278
respondent's counsel of the nature of the content of the documents 42279

and the reason for which the respondent is being held or for which
the respondent's placement is being sought. 42280
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(9) The court shall receive only relevant, competent, and
material evidence. 42282
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(10) The designee of the director shall present the evidence
for the state. In proceedings under this chapter, the attorney
general shall present the comprehensive evaluation, assessment,
diagnosis, prognosis, record of habilitation and care, if any, and
less restrictive habilitation plans, if any. The attorney general
does not have a similar presentation responsibility in connection
with a person who has been found not guilty by reason of insanity
and who is the subject of a hearing under section 2945.40 of the
Revised Code to determine whether the person is a mentally
retarded person subject to institutionalization by court order. 42284
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(11) The respondent has the right to testify and the
respondent or the respondent's counsel has the right to subpoena
witnesses and documents and to present and cross-examine
witnesses. 42294
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(12) The respondent shall not be compelled to testify and
shall be so advised by the court. 42298
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(13) On motion of the respondent or the respondent's counsel
for good cause shown, or upon the court's own motion, the court
may order a continuance of the hearing. 42300
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(14) To an extent not inconsistent with this chapter, the
Rules of Civil Procedure shall be applicable. 42303
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(B) Unless, upon completion of the hearing, the court finds
by clear and convincing evidence that the respondent named in the
affidavit is a mentally retarded person subject to
institutionalization by court order, it shall order the
respondent's discharge forthwith. 42305
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(C) If, upon completion of the hearing, the court finds by clear and convincing evidence that the respondent is a mentally retarded person subject to institutionalization by court order, the court may order the respondent's discharge or order the respondent, for a period not to exceed ninety days, to any of the following:

(1) A public institution, provided that commitment of the respondent to the institution will not cause the institution to exceed its licensed capacity determined in accordance with section 5123.19 of the Revised Code and provided that such a placement is indicated by the comprehensive evaluation report filed pursuant to section 5123.71 of the Revised Code;

(2) A private institution;

(3) A county mental retardation program;

(4) Receive private habilitation and care;

(5) Any other suitable facility, program, or the care of any person consistent with the comprehensive evaluation, assessment, diagnosis, prognosis, and habilitation needs of the respondent.

(D) Any order made pursuant to division (C)(2), (4), or (5) of this section shall be conditional upon the receipt by the court of consent by the facility, program, or person to accept the respondent.

(E) In determining the place to which, or the person with whom, the respondent is to be committed, the court shall consider the comprehensive evaluation, assessment, diagnosis, and projected habilitation plan for the respondent, and shall order the implementation of the least restrictive alternative available and consistent with habilitation goals.

(F) If, at any time it is determined by the director of the facility or program to which, or the person to whom, the

respondent is committed that the respondent could be equally well 42340
habilitated in a less restrictive environment that is available, 42341
the following shall occur: 42342

(1) The respondent shall be released by the director of the 42343
facility or program or by the person forthwith and referred to the 42344
court together with a report of the findings and recommendations 42345
of the facility, program, or person. 42346

(2) The director of the facility or program or the person 42347
shall notify the respondent's counsel and the designee of the 42348
director of mental retardation and developmental disabilities. 42349

(3) The court shall dismiss the case or order placement in 42350
the less restrictive environment. 42351

(G)(1) Except as provided in divisions (G)(2) and (3) of this 42352
section, any person who has been committed under this section may 42353
apply at any time during the ninety-day period for voluntary 42354
admission to an institution under section 5123.69 of the Revised 42355
Code. Upon admission of a voluntary resident, the managing officer 42356
immediately shall notify the court, the respondent's counsel, and 42357
the designee of the director in writing of that fact by mail or 42358
otherwise, and, upon receipt of the notice, the court shall 42359
dismiss the case. ~~is admitted~~ 42360

(2) ~~admitted~~ A person who is found incompetent to stand trial 42361
or not guilty by reason of insanity and who is committed pursuant 42362
to section 2945.39, 2945.40, 2945.401, or 2945.402 of the Revised 42363
Code shall not be voluntarily admitted to an institution pursuant 42364
to division (G)(1) of this section until after the termination of 42365
the commitment, as described in division (J) of section 2945.401 42366
of the Revised Code. 42367

(H) If, at the end of any commitment period, the respondent 42368
has not already been discharged or has not requested voluntary 42369
admission status, the director of the facility or program, or the 42370

person to whose care the respondent has been committed, shall 42371
discharge the respondent forthwith, unless at least ten days 42372
before the expiration of that period the designee of the director 42373
of mental retardation and developmental disabilities or the 42374
prosecutor files an application with the court requesting 42375
continued commitment. 42376

(1) An application for continued commitment shall include a 42377
written report containing a current comprehensive evaluation and 42378
assessment, a diagnosis, a prognosis, an account of progress and 42379
past habilitation, and a description of alternative habilitation 42380
settings and plans, including a habilitation setting that is the 42381
least restrictive setting consistent with the need for 42382
habilitation. A copy of the application shall be provided to 42383
respondent's counsel. The requirements for notice under section 42384
5123.73 of the Revised Code and the provisions of divisions (A) to 42385
(E) of this section apply to all hearings on such applications. 42386

(2) A hearing on the first application for continued 42387
commitment shall be held at the expiration of the first ninety-day 42388
period. The hearing shall be mandatory and may not be waived. 42389

(3) Subsequent periods of commitment not to exceed one 42390
hundred eighty days each may be ordered by the court if the 42391
designee of the director of mental retardation and developmental 42392
disabilities files an application for continued commitment, after 42393
a hearing is held on the application or without a hearing if no 42394
hearing is requested and no hearing required under division (H)(4) 42395
of this section is waived. Upon the application of a person 42396
involuntarily committed under this section, supported by an 42397
affidavit of a licensed physician alleging that the person is no 42398
longer a mentally retarded person subject to institutionalization 42399
by court order, the court for good cause shown may hold a full 42400
hearing on the person's continued commitment prior to the 42401
expiration of any subsequent period of commitment set by the 42402

court. 42403

(4) A mandatory hearing shall be held at least every two 42404
years after the initial commitment. 42405

(5) If the court, after a hearing upon a request to continue 42406
commitment, finds that the respondent is a mentally retarded 42407
person subject to institutionalization by court order, the court 42408
may make an order pursuant to divisions (C), (D), and (E) of this 42409
section. 42410

(I) Notwithstanding the provisions of division (H) of this 42411
section, no person who is found to be a mentally retarded person 42412
subject to institutionalization by court order pursuant to 42413
division ~~(H)~~(P)(2) of section 5123.01 of the Revised Code shall be 42414
held under involuntary commitment for more than five years. 42415

(J) The managing officer admitting a person pursuant to a 42416
judicial proceeding, within ten working days of the admission, 42417
shall make a report of the admission to the department. 42418

~~entity entity entity entity~~ 42419

Sec. 5126.01. As used in this chapter: 42420

(A) ~~"Adult services" means a range of habilitation services~~ 42421
~~designed to meet the individual needs of persons~~ As used in this 42422
division, "adult" means an individual who ~~are~~ is eighteen years of 42423
age or over and ~~are~~ not enrolled in a program or service under 42424
Chapter 3323. of the Revised Code, ~~and of persons~~ an individual 42425
sixteen ~~and~~ or seventeen years of age who ~~are~~ is eligible for 42426
adult services under rules adopted by the director of mental 42427
retardation and developmental disabilities pursuant to Chapter 42428
119. of the Revised Code. ~~Such services may include habilitation~~ 42429
~~programs and services, sheltered employment providing a structured~~ 42430
~~work environment, job training, job placement, supported~~ 42431
~~employment, competitive employment, and planned therapeutic and~~ 42432

~~work activities providing meaningful tasks designed to improve the 42433
effectiveness or degree with which an individual meets the 42434
standards of personal independence and social responsibility 42435
expected of the individual's age and cultural group 42436~~

(1) "Adult services" means services provided to an adult 42437
outside the home, except when they are provided within the home 42438
according to an individual's assessed needs and identified in an 42439
individual service plan, that support learning and assistance in 42440
the area of self-care, sensory and motor development, 42441
socialization, daily living skills, communication, community 42442
living, social skills, or vocational skills. 42443

(2) "Adult services" includes all of the following: 42444

(a) Adult day habilitation services; 42445

(b) Adult day care; 42446

(c) Prevocational services; 42447

(d) Sheltered employment; 42448

(e) Educational experiences and training obtained through 42449
entities and activities that are not expressly intended for 42450
individuals with mental retardation and developmental 42451
disabilities, including trade schools, vocational or technical 42452
schools, adult education, job exploration and sampling, unpaid 42453
work experience in the community, volunteer activities, and 42454
spectator sports. 42455

(3) "Adult services" does not include community or supported 42456
employment services. 42457

(B)(1) "Adult day habilitation services" means adult services 42458
that do the following: 42459

(a) Provide access to and participation in typical activities 42460
and functions of community life that are desired and chosen by the 42461
general population, including such activities and functions as 42462

opportunities to experience and participate in community exploration, companionship with friends and peers, leisure activities, hobbies, maintaining family contacts, community events, and activities where individuals without disabilities are involved; 42463
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(b) Provide supports or a combination of training and supports that afford an individual a wide variety of opportunities to facilitate and build relationships and social supports in the community. 42468
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(2) "Adult day habilitation services" includes all of the following: 42472
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(a) Personal care services needed to ensure an individual's ability to experience and participate in vocational services, educational services, community activities, and any other adult day habilitation services; 42474
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(b) Skilled services provided while receiving adult day habilitation services, including such skilled services as behavior management intervention, occupational therapy, speech and language therapy, physical therapy, and nursing services; 42478
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(c) Training and education in self-determination designed to help the individual do one or more of the following: develop self-advocacy skills, exercise the individual's civil rights, acquire skills that enable the individual to exercise control and responsibility over the services received, and acquire skills that enable the individual to become more independent, integrated, or productive in the community; 42482
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(d) Recreational and leisure activities identified in the individual's service plan as therapeutic in nature or assistive in developing or maintaining social supports; 42489
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(e) Counseling and assistance provided to obtain housing, including such counseling as identifying options for either rental 42492
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<u>or purchase, identifying financial resources, assessing needs for</u>	42494
<u>environmental modifications, locating housing, and planning for</u>	42495
<u>ongoing management and maintenance of the housing selected;</u>	42496
<u>(f) Transportation necessary to access adult day habilitation</u>	42497
<u>services;</u>	42498
<u>(g) Habilitation management, as described in section 5126.14</u>	42499
<u>of the Revised Code.</u>	42500
<u>(3) "Adult day habilitation services" does not include</u>	42501
<u>activities that are components of the provision of residential</u>	42502
<u>services, family support services, or supported living services.</u>	42503
<u>(C) "Community employment services" or "supported employment</u>	42504
<u>services" means job training and other services related to</u>	42505
<u>employment outside a sheltered workshop. "Community employment</u>	42506
<u>services" or "supported employment services" include all of the</u>	42507
<u>following:</u>	42508
<u>(1) Job training resulting in the attainment of competitive</u>	42509
<u>work, supported work in a typical work environment, or</u>	42510
<u>self-employment;</u>	42511
<u>(2) Supervised work experience through an employer paid to</u>	42512
<u>provide the supervised work experience;</u>	42513
<u>(3) Ongoing work in a competitive work environment at a wage</u>	42514
<u>commensurate with workers without disabilities;</u>	42515
<u>(4) Ongoing supervision by an employer paid to provide the</u>	42516
<u>supervision.</u>	42517
<u>(D) As used in this division, "substantial functional</u>	42518
<u>limitation," "developmental delay," and "established risk" have</u>	42519
<u>the meanings established pursuant to section 5123.011 of the</u>	42520
<u>Revised Code.</u>	42521
<u>"Developmental disability" means a severe, chronic disability</u>	42522
<u>that is characterized by all of the following:</u>	42523

(1) It is attributable to a mental or physical impairment or	42524
a combination of mental and physical impairments, other than a	42525
mental or physical impairment solely caused by mental illness as	42526
defined in division (A) of section 5122.01 of the Revised Code;	42527
(2) It is manifested before age twenty-two;	42528
(3) It is likely to continue indefinitely;	42529
(4) It results in one of the following:	42530
(a) In the case of a person under age three, at least one	42531
developmental delay or an established risk;	42532
(b) In the case of a person at least age three but under age	42533
six, at least two developmental delays or an established risk;	42534
(c) In the case of a person age six or older, a substantial	42535
functional limitation in at least three of the following areas of	42536
major life activity, as appropriate for the person's age:	42537
self-care, receptive and expressive language, learning, mobility,	42538
self-direction, capacity for independent living, and, if the	42539
person is at least age sixteen, capacity for economic	42540
self-sufficiency.	42541
(5) It causes the person to need a combination and sequence	42542
of special, interdisciplinary, or other type of care, treatment,	42543
or provision of services for an extended period of time that is	42544
individually planned and coordinated for the person.	42545
(C) (E) "Early childhood services" means a planned program of	42546
habilitation designed to meet the needs of individuals with mental	42547
retardation or other developmental disabilities who have not	42548
attained compulsory school age.	42549
(D) (F)(1) " <u>Environmental modifications</u> " means the physical	42550
<u>adaptations to an individual's home, specified in the individual's</u>	42551
<u>service plan, that are necessary to ensure the individual's</u>	42552
<u>health, safety, and welfare or that enable the individual to</u>	42553

function with greater independence in the home, and without which 42554
the individual would require institutionalization. 42555

(2) "Environmental modifications" includes such adaptations 42556
as installation of ramps and grab-bars, widening of doorways, 42557
modification of bathroom facilities, and installation of 42558
specialized electric and plumbing systems necessary to accommodate 42559
the individual's medical equipment and supplies. 42560

(3) "Environmental modifications" does not include physical 42561
adaptations or improvements to the home that are of general 42562
utility or not of direct medical or remedial benefit to the 42563
individual, including such adaptations or improvements as 42564
carpeting, roof repair, and central air conditioning. 42565

(G) "Family support services" means the services provided 42566
under a family support services program operated under section 42567
5126.11 of the Revised Code. 42568

(H) "Habilitation" means the process by which the staff of 42569
the facility or agency assists an individual with mental 42570
retardation or other developmental disability in acquiring and 42571
maintaining those life skills that enable the individual to cope 42572
more effectively with the demands of the individual's own person 42573
and environment, and in raising the level of the individual's 42574
personal, physical, mental, social, and vocational efficiency. 42575
Habilitation includes, but is not limited to, programs of formal, 42576
structured education and training. 42577

+E)(I) "Habilitation center services" means services provided 42578
by a habilitation center certified by the department of mental 42579
retardation and developmental disabilities under section 5123.041 42580
of the Revised Code and covered by the medicaid program pursuant 42581
to rules adopted under section 5111.041 of the Revised Code. 42582

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(J) "Home and community-based services" means medicaid-funded 42584

home and community-based services provided under a medicaid 42585
component the department of mental retardation and developmental 42586
disabilities administers pursuant to section 5111.871 of the 42587
Revised Code. 42588

(K) "Medicaid" has the same meaning as in section 5111.01 of 42589
the Revised Code. 42590

(L) "Medicaid case management services" means case management 42591
services provided to an individual with mental retardation or 42592
other developmental disability that the state medicaid plan 42593
requires. 42594

(M) "Mental retardation" means a mental impairment manifested 42595
during the developmental period characterized by significantly 42596
subaverage general intellectual functioning existing concurrently 42597
with deficiencies in the effectiveness or degree with which an 42598
individual meets the standards of personal independence and social 42599
responsibility expected of the individual's age and cultural 42600
group. 42601

~~(F)~~(N) "Residential services" means services to individuals 42602
with mental retardation or other developmental disabilities to 42603
provide housing, food, clothing, habilitation, staff support, and 42604
related support services necessary for the health, safety, and 42605
welfare of the individuals and the advancement of their quality of 42606
life. "Residential services" includes program management, as 42607
described in section 5126.14 of the Revised Code. 42608

~~(G)~~(O) "Resources" means available capital and other assets, 42609
including moneys received from the federal, state, and local 42610
governments, private grants, and donations; appropriately 42611
qualified personnel; and appropriate capital facilities and 42612
equipment. 42613

~~(H)~~(P) "Service and support administration" means the duties 42614
performed by a service and support administrator pursuant to 42615

section 5126.15 of the Revised Code. 42616

(Q)(1) "Specialized medical, adaptive, and assistive equipment, supplies, and supports" means equipment, supplies, and supports that enable an individual to increase the ability to perform activities of daily living or to perceive, control, or communicate within the environment. 42617
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(2) "Specialized medical, adaptive, and assistive equipment, supplies, and supports" includes the following: 42622
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(a) Eating utensils, adaptive feeding dishes, plate guards, mylatex straps, hand splints, reaches, feeder seats, adjustable pointer sticks, interpreter services, telecommunication devices for the deaf, computerized communications boards, other communication devices, support animals, veterinary care for support animals, adaptive beds, supine boards, prone boards, wedges, sand bags, sidelayers, bolsters, adaptive electrical switches, hand-held shower heads, air conditioners, humidifiers, emergency response systems, folding shopping carts, vehicle lifts, vehicle hand controls, other adaptations of vehicles for accessibility, and repair of the equipment received. 42624
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(b) Nondisposable items not covered by medicaid that are intended to assist an individual in activities of daily living or instrumental activities of daily living. 42635
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(R) "Supportive home services" means a range of services to families of individuals with mental retardation or other developmental disabilities to develop and maintain increased acceptance and understanding of such persons, increased ability of family members to teach the person, better coordination between school and home, skills in performing specific therapeutic and management techniques, and ability to cope with specific situations. 42638
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(I)(S)(1) "Supported living" means services provided for as 42646

long as twenty-four hours a day to an individual with mental 42647
retardation or other developmental disability through any public 42648
or private resources, including moneys from the individual, that 42649
enhance the individual's reputation in community life and advance 42650
the individual's quality of life by doing the following: 42651

~~(1)(a)~~ Providing the support necessary to enable an 42652
individual to live in a residence of the individual's choice ~~and~~ 42653
~~to choose to live alone~~, with any number of individuals who are 42654
not disabled, or with not more than three individuals with mental 42655
retardation and developmental disabilities unless the individuals 42656
are related by blood or marriage; 42657

~~(2)(b)~~ Encouraging the individual's participation in the 42658
community; 42659

~~(3)(c)~~ Promoting the individual's rights and autonomy; 42660

~~(4)~~ ~~Encouraging the increase of the individual's (d)~~ 42661
Assisting the individual in acquiring, retaining, and improving 42662
the skills and competence necessary to live successfully in the 42663
individual's residence. 42664

(2) "Supported living" includes the provision of housing all 42665
of the following: 42666

(a) Housing, food, clothing, habilitation, staff support, 42667
professional services, and any related support services necessary 42668
~~for~~ to ensure the health, safety, and welfare of the individual 42669
receiving the services; 42670

(b) A combination of life-long or extended-duration 42671
supervision, training, and other services essential to daily 42672
living, including assessment and evaluation and assistance with 42673
the cost of training materials, transportation, fees, and 42674
supplies; 42675

(c) Personal care services and homemaker services; 42676

(d) Household maintenance that does not include modifications to the physical structure of the residence; 42677
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(e) Respite care services; 42679

(f) Program management, as described in section 5126.14 of the Revised Code. 42680
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Sec. 5126.035. (A) As used in this section: 42682

(1) "Provider" means a person or government entity that provides services to an individual with mental retardation or other developmental disability pursuant to a service contract. 42683
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(2) "Service contract" means a contract between a county board of mental retardation and developmental disabilities and a provider under which the provider is to provide services to an individual with mental retardation or other developmental disability. 42686
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(B) Each service contract that a county board of mental retardation and developmental disabilities enters into with a provider shall do all of the following: 42691
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(1) Comply with rules adopted under division (E) of this section; 42694
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(2) If the provider is to provide home and community-based services, medicaid case management services, or habilitation center services, comply with all applicable statewide medicaid requirements; 42696
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(3) Include a general operating agreement component and an individual service needs addendum. 42700
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(C) The general operating agreement component shall include all of the following: 42702
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(1) The roles and responsibilities of the county board regarding services for individuals with mental retardation or 42704
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<u>other developmental disability who reside in the county the county</u>	42706
<u>board serves;</u>	42707
<u>(2) The roles and responsibilities of the provider as</u>	42708
<u>specified in the individual service needs addendum;</u>	42709
<u>(3) Procedures for the county board to monitor the provider's</u>	42710
<u>services;</u>	42711
<u>(4) Procedures for the county board to evaluate the quality</u>	42712
<u>of care and cost effectiveness of the provider's services;</u>	42713
<u>(5) Procedures for payment of eligible claims;</u>	42714
<u>(6) If the provider is to provide home and community-based</u>	42715
<u>services, medicaid case management services, or habilitation</u>	42716
<u>center services, both of the following:</u>	42717
<u>(a) Procedures for reimbursement that conform to the</u>	42718
<u>statewide reimbursement process and the county board's plan</u>	42719
<u>submitted under section 5126.054 of the Revised Code;</u>	42720
<u>(b) Procedures that ensure that the county board pays the</u>	42721
<u>nonfederal share of the medicaid expenditures that the county</u>	42722
<u>board is required by division (A) of section 5126.056 of the</u>	42723
<u>Revised Code to pay.</u>	42724
<u>(7) Procedures for the county board to perform service</u>	42725
<u>utilization reviews and the implementation of required corrective</u>	42726
<u>actions;</u>	42727
<u>(8) Procedures for the provider to submit claims for payment</u>	42728
<u>for a service no later than three hundred thirty days after the</u>	42729
<u>date the service is provided;</u>	42730
<u>(9) Procedures for rejecting claims for payment that are</u>	42731
<u>submitted after the time required by division (B)(9) of this</u>	42732
<u>section;</u>	42733
<u>(10) Procedures for developing, modifying, and executing</u>	42734

<u>initial and subsequent service plans. The procedures shall provide</u>	42735
<u>for the provider's participation.</u>	42736
<u>(11) Procedures for affording individuals due process</u>	42737
<u>protections;</u>	42738
<u>(12) General staffing, training, and certification</u>	42739
<u>requirements that are consistent with state requirements and</u>	42740
<u>compensation arrangements that are necessary to attract, train,</u>	42741
<u>and retain competent personnel to deliver the services pursuant to</u>	42742
<u>the individual service needs addendum;</u>	42743
<u>(13) Methods to be used to document services provided and</u>	42744
<u>procedures for submitting reports the county board requires;</u>	42745
<u>(14) Methods for authorizing and documenting within</u>	42746
<u>seventy-two hours changes to the individual service needs</u>	42747
<u>addendum. The methods shall allow for changes to be initially</u>	42748
<u>authorized verbally and subsequently in writing.</u>	42749
<u>(15) Procedures for modifying the individual service needs</u>	42750
<u>addendum in accordance with changes to the recipient's</u>	42751
<u>individualized service plan;</u>	42752
<u>(16) Procedures for terminating the individual service needs</u>	42753
<u>addendum within thirty days of a request made by the recipient;</u>	42754
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<u>(17) A requirement that all parties to the contract accept</u>	42756
<u>the contract's terms and conditions;</u>	42757
<u>(18) A designated contact person and the method of contacting</u>	42758
<u>the designated person to respond to medical or behavioral problems</u>	42759
<u>and allegations of major unusual incidents or unusual incidents;</u>	42760
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<u>(19) Procedures for ensuring the health and welfare of the</u>	42762
<u>recipient;</u>	42763
<u>(20) Procedures for ensuring fiscal accountability and the</u>	42764

<u>collection and reporting of programmatic data;</u>	42765
<u>(21) Procedures for implementing the mediation and arbitration process under section 5126.036 of the Revised Code;</u>	42766
<u>(22) Procedures for amending or terminating the contract, including as necessary to make the general operating agreement component consistent with any changes made to the individual service needs addendum;</u>	42768
<u>(23) Anything else allowable under federal and state law that the county board and provider agree to.</u>	42769
<u>(D) The individual service needs addendum shall be consistent with the general operating agreement component and include all of the following:</u>	42770
<u>(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;</u>	42771
<u>(2) A clear and complete description of the services that the recipient is to receive as determined using statewide assessment tools;</u>	42772
<u>(3) A copy of the recipient's assessment and individualized service plan;</u>	42773
<u>(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.</u>	42774
<u>(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</u>	42775
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community-based services, medicaid case management services, or 42795
habilitation center services have a medicaid provider agreement 42796
with the department of job and family services. 42797

Sec. 5126.036. (A) As used in this section: 42798

(1) "Aggrieved party" means any of the following: 42799

(a) The party to a service contract that is aggrieved by an 42800
action the other party has taken or not taken under the service 42801
contract; 42802

(b) A person or government entity aggrieved by the refusal of 42803
a county board of mental retardation and developmental 42804
disabilities to enter into a service contract with the person or 42805
government entity; 42806

(c) A person or government entity aggrieved by termination by 42807
a county board of mental retardation and development disabilities 42808
of a service contract between the person or government entity and 42809
the county board. 42810

(2) "Mediator/arbitrator" means either of the following: 42811

(a) An attorney at law licensed to practice law in this state 42812
who is mutually selected by the parties under division (B)(4) of 42813
this section to conduct mediation and arbitration; 42814

(b) A retired judge who is selected under division (B)(4) of 42815
this section to conduct mediation and arbitration. 42816

(3) "Other party" means any of the following: 42817

(a) The party to a service contract that has taken or not 42818
taken an action under the service contract that causes the 42819
aggrieved party to be aggrieved; 42820

(b) A county board of mental retardation and developmental 42821
disabilities that refuses to enter into a service contract with a 42822
person or government entity; 42823

(c) A county board of mental retardation and developmental disabilities that terminates a service contract. 42824
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(4) "Parties" mean either of the following: 42826

(a) A county board of mental retardation and developmental disabilities and a provider that have or had a service contract with each other; 42827
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(b) A person or government entity that seeks a service contract with a county board of mental retardation and developmental disabilities and the county board that refuses to enter into the service contract with the person or government entity. 42830
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(5) "Provider" means a person or government entity that provides services to an individual with mental retardation or other developmental disability pursuant to a service contract. 42835
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(6) "Service contract" means a contract between a county board of mental retardation and developmental disabilities and a provider under which the provider is to provide services to an individual with mental retardation or other developmental disability. 42838
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(B) An aggrieved party that seeks to require the other party to take or cease an action under a service contract that causes the aggrieved party to be aggrieved, 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, or a person or government entity aggrieved by a county board's termination of a service contract between the person or government entity and the county board and the other party shall follow the following mediation and arbitration procedures: 42843
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(1) No later than thirty days after first notifying the other party that the aggrieved party is aggrieved, the aggrieved party 42853
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shall file a written notice of mediation and arbitration with the department of mental retardation and developmental disabilities and provide a copy of the written notice to the other party. The written notice shall include an explanation of why the aggrieved party is aggrieved. The department of mental retardation and developmental disabilities shall provide the department of job and family services a copy of the notice.

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

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(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.

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(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

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create such a list and provide it to the parties. To select the 42887
retired judge to conduct the mediation and arbitration, the 42888
parties shall take turns, beginning with the aggrieved party, 42889
striking retired judges from the list. The retired judge remaining 42890
on the list after both parties have each stricken two retired 42891
judges from the list shall perform the mediation and arbitration 42892
duties, including scheduling the first meeting of mediation if the 42893
parties are unable to agree on a date for the first meeting. 42894
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(5) A stenographic record or tape recording and transcript of 42896
each mediation and arbitration meeting shall be maintained as part 42897
of the mediation and arbitration's official records. The parties 42898
shall share the cost of the mediation and arbitration, including 42899
the cost of the mediator/arbitrator's services but excluding the 42900
cost of representation. 42901

(6) The first mediation meeting shall be held no later than 42902
sixty days after the date the aggrieved party files the written 42903
notice of mediation and arbitration under division (B)(1) of this 42904
section unless the parties informally resolve the conflict under 42905
division (B)(3) of this section or the parties mutually agree to 42906
hold the first meeting at a later time. The mediation shall be 42907
conducted in the manner the parties mutually agree. If the parties 42908
are unable to agree on how the mediation is to be conducted, the 42909
mediator/arbitrator selected under division (B)(4) of this section 42910
shall determine how it is to be conducted. The rules of evidence 42911
may be used. The mediator/arbitrator shall attempt to resolve the 42912
conflict through the mediation process. The mediator/arbitrator's 42913
resolution of the conflict may be applied retroactively. 42914
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(7) If the conflict is not resolved through the mediation 42916
process, the mediator/arbitrator shall arbitrate the conflict. The 42917
parties shall present evidence to the mediator/arbitrator in the 42918

manner the mediator/arbitrator requires. The mediator/arbitrator shall render a written recommendation within thirty days of the conclusion of the last arbitration meeting based on the service contract, applicable law, and the preponderance of the evidence presented during the arbitration. The mediator/arbitrator's recommendation may be applied retroactively. If the parties agree, the mediator/arbitrator may continue to attempt to resolve the conflict through mediation while the mediator/arbitrator the conflict. 42919
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(8) No later than thirty days after the mediator/arbitrator renders a recommendation in an arbitration, the mediator/arbitrator shall provide the parties with a written recommendation and forward a copy of the written recommendation, transcripts from each arbitration meeting, and a copy of all evidence presented to the mediator/arbitrator during the arbitration to the departments of mental retardation and developmental disabilities and job and family services. 42928
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(9) No later than thirty days after the department of mental retardation and developmental disabilities receives the mediator/arbitrator's recommendation and the materials required by division (B)(8) of this section, the department shall adopt, reject, or modify the mediator/arbitrator's recommendation consistent with the mediator/arbitrator's findings of fact and conclusions of law or remand any portion of the recommendation to the mediator/arbitrator for further findings on a specific factual or legal issue. The mediator/arbitrator shall complete the further findings and provide the parties and the department with a written response to the remand within sixty days of the date the mediator/arbitrator receives the remand. On receipt of the mediator/arbitrator's response to the remand, the department, within thirty days, unless the parties agree otherwise, shall adopt, reject, or modify the mediator/arbitrator's response. The 42936
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department's actions regarding the mediator/arbitrator's 42951
recommendation and response are a final adjudication order subject 42952
to appeal to the court of common pleas of Franklin county under 42953
section 119.12 of the Revised Code, except that the court shall 42954
consider only whether the conclusions of law the department adopts 42955
are in accordance with the law. 42956

(10) If the department of job and family services, in 42957
consultation with the department of mental retardation and 42958
developmental disabilities, determines no later than thirty days 42959
following the date the department of mental retardation and 42960
developmental disabilities receives the mediator/arbitrator's 42961
recommendation and the materials required by division (B)(8) of 42962
this section, or, if the recommendation is remanded under division 42963
(B)(9) of this section, thirty days following the date the 42964
department receives the response to the remand, that any aspect of 42965
the conflict between the parties affects the medicaid program, the 42966
department of mental retardation and developmental disabilities 42967
shall take all actions under division (B)(9) of this section in 42968
consultation with the department of job and family services. 42969

(C) If the department of mental retardation and developmental 42970
disabilities is aware of a conflict between a county board of 42971
mental retardation and developmental disabilities and a person or 42972
government entity that provides or seeks to provide services to an 42973
individual with mental retardation or other developmental 42974
disability to which the mediation and arbitration procedures 42975
established by this section may be applied and that the aggrieved 42976
party has not filed a written notice of mediation and arbitration 42977
within the time required by division (B)(1) of this section, the 42978
department may require that the parties implement the mediation 42979
and arbitration procedures. 42980

(D) Each service contract shall provide for the parties to 42981
follow the mediation and arbitration procedures established by 42982

this section if a party takes or does not take an action under the 42983
service contract that causes the aggrieved party to be aggrieved 42984
or if the provider is aggrieved by the county board's termination 42985
of the service contract. 42986

Sec. 5126.041. (A) As used in this section: 42987

(1) "Biological risk" and "environmental risk" have the 42988
meanings established pursuant to section 5123.011 of the Revised 42989
Code. 42990

(2) "Handicapped preschool child" has the same meaning as in 42991
section 3323.01 of the Revised Code. 42992

(3) "State institution" means all or part of an institution 42993
under the control of the department of mental retardation and 42994
developmental disabilities pursuant to section 5123.03 of the 42995
Revised Code and maintained for the care, treatment, and training 42996
of the mentally retarded. 42997

(B) Except as provided in division (C) of this section, each 42998
county board of mental retardation and developmental disabilities 42999
shall make eligibility determinations in accordance with the 43000
definition of "developmental disability" in section 5126.01 of the 43001
Revised Code. Pursuant to rules the department of mental 43002
retardation and developmental disabilities shall adopt in 43003
accordance with Chapter 119. of the Revised Code, a county board 43004
may establish eligibility for programs and services for either of 43005
the following: 43006

(1) Individuals under age six who have a biological risk or 43007
environmental risk of a developmental delay; 43008

(2) Any handicapped preschool child eligible for services 43009
under section 3323.02 of the Revised Code whose handicap is not 43010
attributable solely to mental illness as defined in section 43011
5122.01 of the Revised Code. 43012

(C)(1) A county board shall make determinations of 43013
eligibility for ~~case management services~~ service and support 43014
administration in accordance with rules adopted under section 43015
~~5126.15~~ 5126.08 of the Revised Code. 43016

(2) All persons who were eligible for services and enrolled 43017
in programs offered by a county board of mental retardation and 43018
developmental disabilities pursuant to this chapter on July 1, 43019
1991, shall continue to be eligible for those services and to be 43020
enrolled in those programs as long as they are in need of 43021
services. 43022

(3) A person who resided in a state institution on or before 43023
October 29, 1993, is eligible for programs and services offered by 43024
a county board of mental retardation and developmental 43025
disabilities, unless the person is determined by the county board 43026
not to be in need of those programs and services. 43027

(D) A county board shall refer a person who requests but is 43028
not eligible for programs and services offered by the board to 43029
other entities of state and local government or appropriate 43030
private entities that provide services. 43031

(E) Membership of a person on, or employment of a person by, 43032
a county board of mental retardation and developmental 43033
disabilities does not affect the eligibility of any member of that 43034
person's family for services provided by the board or by any 43035
entity under contract with the board. 43036

Sec. 5126.042. (A) As used in this section: 43037

(1) "Emergency" means any situation that creates for an 43038
individual with mental retardation or developmental disabilities a 43039
risk of substantial self-harm or substantial harm to others if 43040
action is not taken within thirty days. An "emergency" may include 43041
one or more of the following situations: 43042

(a) Loss of present residence for any reason, including legal action;	43043 43044
(b) Loss of present caretaker for any reason, including serious illness of the caretaker, change in the caretaker's status, or inability of the caretaker to perform effectively for the individual;	43045 43046 43047 43048
(c) Abuse, neglect, or exploitation of the individual;	43049
(d) Health and safety conditions that pose a serious risk to the individual or others of immediate harm or death;	43050 43051
(e) Change in the emotional or physical condition of the individual that necessitates substantial accommodation that cannot be reasonably provided by the individual's existing caretaker.	43052 43053 43054
(2) "Medicaid" has the same meaning as in section 5111.01 of the Revised Code.	43055 43056
(3) "Priority" means any situation that would constitute an emergency except that action to resolve the situation may be taken in more than thirty but less than ninety days without creating a risk of substantial harm to self or others.	43057 43058 43059 43060
(B) If a county board of mental retardation and developmental disabilities determines that available resources are not sufficient to meet the needs of all individuals who request programs and services and may be offered the programs and services, it shall establish waiting lists for services. The board may establish priorities for making placements on its waiting lists according to an individual's emergency or priority status <u>and shall establish priorities in accordance with division (D) of this section.</u>	43061 43062 43063 43064 43065 43066 43067 43068 43069
The individuals who may be placed on a waiting list include individuals with a need for services on an emergency or priority basis and individuals who have requested services for which	43070 43071 43072

resources are not available. 43073

~~An Except for an individual who is to receive priority for~~ 43074
~~services pursuant to division (D)(3) of this section, an~~ 43075
individual who currently receives a service but would like to 43076
change to another service shall not be placed on a waiting list 43077
but shall be placed on a service substitution list. The board 43078
shall work with the individual, service providers, and all 43079
appropriate entities to facilitate the change in service as 43080
expeditiously as possible. The board may establish priorities for 43081
making placements on its service substitution lists according to 43082
an individual's emergency ~~or priority~~ status. 43083

In addition to maintaining waiting lists and service 43084
substitution lists, a board shall maintain a long-term service 43085
planning registry for individuals who wish to record their 43086
intention to request in the future a service they are not 43087
currently receiving. The purpose of the registry is to enable the 43088
board to document requests and to plan appropriately. The board 43089
may not place an individual on the registry who meets the 43090
conditions for receipt of services on an emergency ~~or priority~~ 43091
basis. 43092

(C) A county board shall establish a separate waiting list 43093
for each of the following categories of services, and may 43094
establish separate waiting lists within the waiting lists: 43095

(1) Early childhood services; 43096

(2) Educational programs for preschool and school age 43097
children; 43098

(3) Adult services; 43099

(4) ~~Case management services~~ service and support 43100
administration; 43101

(5) Residential services and supported living; 43102

(6) Transportation services;	43103
(7) Other services determined necessary and appropriate for persons with mental retardation or a developmental disability according to their individual habilitation or service plans;	43104 43105 43106
(8) Family support services provided under section 5126.11 of the Revised Code.	43107 43108
(D) <u>Except as provided in division (E) of this section, a county board shall do all of the following in accordance with the county board's plan approved under section 5123.046 of the Revised Code as priorities:</u>	43109 43110 43111 43112
<u>(1) For the purpose of obtaining additional federal medicaid funds for home and community-based services, medicaid case management services, and habilitation center services, do both of the following:</u>	43113 43114 43115 43116
<u>(a) Give an individual who is eligible for home and community-based services and meets both of the following requirements priority over any other individual on a waiting list established under division (C) of this section for home and community-based services that include supported living, residential services, or family support services:</u>	43117 43118 43119 43120 43121 43122
<u>(i) Is twenty-two years of age or older;</u>	43123
<u>(ii) Receives supported living or family support services.</u>	43124
<u>(b) Give an individual who is eligible for home and community-based services and meets both of the following requirements priority over any other individual on a waiting list established under division (C) of this section for home and community-based services that include adult services:</u>	43125 43126 43127 43128 43129
<u>(i) Resides in the individual's own home or the home of the individual's family and will continue to reside in that home after enrollment in home and community-based services;</u>	43130 43131 43132

<u>(ii) Receives adult services from the county board.</u>	43133
<u>(2) As federal medicaid funds become available pursuant to</u>	43134
<u>division (D)(1) of this section, give an individual who is</u>	43135
<u>eligible for home and community-based services and meets any of</u>	43136
<u>the following requirements priority for such services over any</u>	43137
<u>other individual on a waiting list established under division (C)</u>	43138
<u>of this section other than an individual given priority under</u>	43139
<u>division (D)(1) of this section:</u>	43140
<u>(a) Does not receive residential services or supported</u>	43141
<u>living, either needs services in the individual's current living</u>	43142
<u>arrangement or will need services in a new living arrangement, and</u>	43143
<u>has a primary caregiver who is sixty years of age or older;</u>	43144
<u>(b) Is less than twenty-two years of age, does not receive</u>	43145
<u>residential services or supported living, resides in the home of</u>	43146
<u>the individual's family, and has at least one of the following</u>	43147
<u>service needs that are unusual in scope or intensity:</u>	43148
<u>(i) Severe behavior problems for which a behavior support</u>	43149
<u>plan is needed;</u>	43150
<u>(ii) An emotional disorder for which anti-psychotic</u>	43151
<u>medication is needed;</u>	43152
<u>(iii) A medical condition that leaves the individual</u>	43153
<u>dependent on life-support medical technology;</u>	43154
<u>(iv) A condition affecting multiple body systems for which a</u>	43155
<u>combination of specialized medical, psychological, educational, or</u>	43156
<u>habilitation services are needed;</u>	43157
<u>(v) A condition the county board determines to be comparable</u>	43158
<u>in severity to any condition described in division (D)(1)(b)(i) to</u>	43159
<u>(iv) of this section and places the individual at significant risk</u>	43160
<u>of institutionalization.</u>	43161
<u>(c) Is twenty-two years of age or older and is determined by</u>	43162

the county board to have intensive needs for residential services 43163
on an in-home or out-of-home basis. 43164

(3) In fiscal years 2002 and 2003, give an individual who is 43165
eligible for home and community-based services, resides in an 43166
intermediate care facility for the mentally retarded or nursing 43167
facility, chooses to move to another setting with the help of home 43168
and community-based services, and has been determined by the 43169
department of mental retardation and developmental disabilities to 43170
be capable of residing in the other setting, priority over any 43171
other individual on a waiting list established under division (C) 43172
of this section for home and community-based services who does not 43173
meet these criteria. The department of mental retardation and 43174
developmental disabilities shall identify the individuals to 43175
receive priority under division (D)(3) of this section, assess the 43176
needs of the individuals, and notify the county boards that are to 43177
provide the individuals priority under division (D)(3) of this 43178
section of the individuals identified by the department and the 43179
individuals' assessed needs. 43180

(E)(1) No individual may receive priority for services 43181
pursuant to division (D) of this section over an individual placed 43182
on a waiting list established under division (C) of this section 43183
on an emergency status. 43184

(2) No more than two hundred individuals in the state may 43185
receive priority for services during state fiscal years 2002 and 43186
2003 pursuant to division (D)(2)(b) of this section. 43187

(3) No more than a total of seventy-five individuals in the 43188
state may receive priority for services during state fiscal years 43189
2002 and 2003 pursuant to division (D)(3) of this section. 43190

(F) Prior to establishing any waiting list under this 43191
section, a county board shall develop and implement a policy for 43192
waiting lists that complies with this section and rules that the 43193

department of mental retardation and developmental disabilities 43194
shall adopt in accordance with Chapter 119. of the Revised Code. 43195
The department's rules shall include procedures to be followed to 43196
ensure that the due process rights of individuals placed on 43197
waiting lists are not violated. 43198

Prior to placing an individual on a waiting list, the county 43199
board shall assess the service needs of the individual in 43200
accordance with all applicable state and federal laws. The county 43201
board shall place the individual on the appropriate waiting list 43202
and may place the individual on more than one waiting list. The 43203
county board shall notify the individual of the individual's 43204
placement and position on each waiting list on which the 43205
individual is placed. 43206

At least annually, the county board shall reassess the 43207
service needs of each individual on a waiting list. If it 43208
determines that an individual no longer needs a program or 43209
service, the county board shall remove the individual from the 43210
waiting list. If it determines that an individual needs a program 43211
or service other than the one for which the individual is on the 43212
waiting list, the county board shall provide the program or 43213
service to the individual or place the individual on a waiting 43214
list for the program or service in accordance with the board's 43215
policy for waiting lists. 43216

When a program or service for which there is a waiting list 43217
becomes available, the county board shall reassess the service 43218
needs of the individual next scheduled on the waiting list to 43219
receive that program or service. If the reassessment demonstrates 43220
that the individual continues to need the program or service, the 43221
board shall offer the program or service to the individual. If it 43222
determines that an individual no longer needs a program or 43223
service, the county board shall remove the individual from the 43224
waiting list. If it determines that an individual needs a program 43225

or service other than the one for which the individual is on the 43226
waiting list, the county board shall provide the program or 43227
service to the individual or place the individual on a waiting 43228
list for the program or service in accordance with the board's 43229
policy for waiting lists. The county board shall notify the 43230
individual of the individual's placement and position on the 43231
waiting list on which the individual is placed. 43232

~~(E)~~(G) A child subject to a determination made pursuant to 43233
section 121.38 of the Revised Code who requires the home and 43234
community-based services provided through the ~~medical assistance~~ 43235
~~waiver programs operated~~ medicaid component that the department of 43236
mental retardation and developmental disabilities administers 43237
under ~~sections 5111.87 and 5111.88~~ section 5111.871 of the Revised 43238
Code shall receive services through the ~~waiver programs adopted~~ 43239
under ~~Chapters 5111., 5123., and 5126. of the Revised Code~~ that 43240
medicaid component. For all other services, a child subject to a 43241
determination made pursuant to section 121.38 of the Revised Code 43242
shall be treated as an emergency by the county boards and shall 43243
not be subject to a waiting list. 43244

~~(F)~~(H) Not later than the fifteenth day of March of each 43245
even-numbered year, each county board shall prepare and submit to 43246
the director of mental retardation and developmental disabilities 43247
its recommendations for the funding of services for individuals 43248
with mental retardation and developmental disabilities and its 43249
proposals for reducing the waiting lists for services. 43250

~~(G)~~(I) The following shall take precedence over the 43251
applicable provisions of this section: 43252

(1) Medicaid rules and regulations; 43253

(2) Any specific requirements that may be contained within a 43254
medicaid state plan amendment or waiver program that a county 43255
board has authority to administer or with respect to which it has 43256

authority to provide services, programs, or supports.

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Sec. 5126.046. (A) Each county board of mental retardation and developmental disabilities that has medicaid local administrative authority under division (A) of section 5126.055 of the Revised Code for habilitation, vocational, or community employment services provided as part of home and community-based services shall create a list of all persons and government entities eligible to provide such habilitation, vocational, or community employment services. If the county board chooses and is eligible to provide such habilitation, vocational, or community employment services, the county board shall include itself on the list. The county board shall make the list available to each individual with mental retardation or other developmental disability who resides in the county and is eligible for such habilitation, vocational, or community employment services. The county board shall also make the list available to such individuals' families.

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

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If a county board has medicaid local administrative authority under division (A) of section 5126.055 of the Revised Code for habilitation, vocational, and community employment services provided as part of home and community-based services, the county board shall pay the nonfederal share of the habilitation, vocational, and community employment services when required by section 5126.056 of the Revised Code. The department of mental retardation and developmental disabilities shall pay the nonfederal share of such habilitation, vocational, and community employment services when required by section 5123.047 of the

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Revised Code. 43288

(B) Each month, the department of mental retardation and developmental disabilities shall create a list of all persons and government entities eligible to provide residential services and supported living. The department shall include on the list all residential facilities licensed under section 5123.19 of the Revised Code and all supported living providers certified under section 5126.431 of the Revised Code. The department shall distribute the monthly lists to county boards that have local administrative authority under division (A) of section 5126.055 of the Revised Code for residential services and supported living provided as part of home and community-based services. A county board that receives a list shall make it available to each individual with mental retardation or other developmental disability who resides in the county and is eligible for such residential services or supported living. The county board shall also make the list available to the families of those individuals. 43289
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An individual who is eligible for residential services or supported living may choose the provider of the residential services or supported living. 43305
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If a county board has medicaid local administrative authority under division (A) of section 5126.055 of the Revised Code for residential services and supported living provided as part of home and community-based services, the county board shall pay the nonfederal share of the residential services and supported living when required by section 5126.056 of the Revised Code. The department shall pay the nonfederal share of the residential services and supported living when required by section 5123.047 of the Revised Code. 43308
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(C) If a county board that has medicaid local administrative authority under division (A) of section 5126.055 of the Revised Code for home and community-based services violates the right 43317
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established by this section of an individual to choose a provider 43320
that is qualified and willing to provide services to the 43321
individual, the individual shall receive timely notice that the 43322
individual may request a hearing under section 5101.35 of the 43323
Revised Code. 43324

(D) The departments of mental retardation and developmental 43325
disabilities and job and family services shall adopt rules in 43326
accordance with Chapter 119. of the Revised Code governing the 43327
implementation of this section. The rules shall include procedures 43328
for individuals to choose their service providers. The rules shall 43329
not be limited by a provider selection system established under 43330
section 5126.42 of the Revised Code, including any pool of 43331
providers created pursuant to a provider selection system. 43332
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Sec. 5126.05. (A) Subject to the rules established by the 43334
director of mental retardation and developmental disabilities 43335
pursuant to Chapter 119. of the Revised Code for programs and 43336
services offered pursuant to this chapter, and subject to the 43337
rules established by the state board of education pursuant to 43338
Chapter 119. of the Revised Code for programs and services offered 43339
pursuant to Chapter 3323. of the Revised Code, the county board of 43340
mental retardation and developmental disabilities shall: 43341

(1) Administer and operate facilities, programs, and services 43342
as provided by this chapter and Chapter 3323. of the Revised Code 43343
and establish policies for their administration and operation; 43344
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(2) Coordinate, monitor, and evaluate existing services and 43346
facilities available to individuals with mental retardation and 43347
developmental disabilities; 43348

(3) Provide early childhood services, supportive home 43349
services, and adult services, according to the plan and priorities 43350

developed under section 5126.04 of the Revised Code; 43351

(4) Provide or contract for special education services 43352
pursuant to Chapters 3317. and 3323. of the Revised Code and 43353
ensure that related services, as defined in section 3323.01 of the 43354
Revised Code, are available according to the plan and priorities 43355
developed under section 5126.04 of the Revised Code; 43356

(5) Adopt a budget, authorize expenditures for the purposes 43357
specified in this chapter and do so in accordance with section 43358
319.16 of the Revised Code, approve attendance of board members 43359
and employees at professional meetings and approve expenditures 43360
for attendance, and exercise such powers and duties as are 43361
prescribed by the director; 43362

(6) Submit annual reports of its work and expenditures, 43363
pursuant to sections 3323.09 and 5126.12 of the Revised Code, to 43364
the director, the superintendent of public instruction, and the 43365
board of county commissioners at the close of the fiscal year and 43366
at such other times as may reasonably be requested; 43367

(7) Authorize all positions of employment, establish 43368
compensation, including but not limited to salary schedules and 43369
fringe benefits for all board employees, approve contracts of 43370
employment for management employees that are for a term of more 43371
than one year, employ legal counsel under section 309.10 of the 43372
Revised Code, and contract for employee benefits; 43373

(8) Provide ~~case management services, as defined in rules~~ 43374
~~adopted by the director of mental retardation and developmental~~ 43375
~~disabilities, service and support administration~~ in accordance 43376
with section ~~5126.15~~ 5126.046 of the Revised Code; 43377

(9) Certify respite care homes pursuant to rules adopted 43378
under section 5123.171 of the Revised Code by the director of 43379
mental retardation and developmental disabilities. 43380

(B) To the extent that rules adopted under this section apply 43381

to the identification and placement of handicapped children under 43382
Chapter 3323. of the Revised Code, they shall be consistent with 43383
the standards and procedures established under sections 3323.03 to 43384
3323.05 of the Revised Code. 43385

(C) Any county board may enter into contracts with other such 43386
boards and with public or private, nonprofit, or profit-making 43387
agencies or organizations of the same or another county, to 43388
provide the facilities, programs, and services authorized or 43389
required, upon such terms as may be agreeable, and in accordance 43390
with this chapter and Chapter 3323. of the Revised Code and rules 43391
adopted thereunder and in accordance with sections 307.86 and 43392
5126.071 of the Revised Code. 43393

(D) A county board may combine transportation for children 43394
and adults enrolled in programs and services offered under section 43395
5126.12 with transportation for children enrolled in classes 43396
funded under section 3317.20 or units approved under section 43397
3317.05 of the Revised Code. 43398

(E) A county board may purchase all necessary insurance 43399
policies, may purchase equipment and supplies through the 43400
department of administrative services or from other sources, and 43401
may enter into agreements with public agencies or nonprofit 43402
organizations for cooperative purchasing arrangements. 43403

(F) A county board may receive by gift, grant, devise, or 43404
bequest any moneys, lands, or property for the benefit of the 43405
purposes for which the board is established and hold, apply, and 43406
dispose of the moneys, lands, and property according to the terms 43407
of the gift, grant, devise, or bequest. All money received by 43408
gift, grant, bequest, or disposition of lands or property received 43409
by gift, grant, devise, or bequest shall be deposited in the 43410
county treasury to the credit of such board and shall be available 43411
for use by the board for purposes determined or stated by the 43412
donor or grantor, but may not be used for personal expenses of the 43413

board members. Any interest or earnings accruing from such gift, 43414
grant, devise, or bequest shall be treated in the same manner and 43415
subject to the same provisions as such gift, grant, devise, or 43416
bequest. 43417

(G) The board of county commissioners shall levy taxes and 43418
make appropriations sufficient to enable the county board of 43419
mental retardation and developmental disabilities to perform its 43420
functions and duties, and may utilize any available local, state, 43421
and federal funds for such purpose. 43422

Sec. 5126.051. (A) To the extent that resources are 43423
available, a county board of mental retardation and developmental 43424
disabilities ~~may~~ shall provide for or arrange residential services 43425
and supported living for individuals with mental retardation and 43426
developmental disabilities. 43427

A county board may acquire, convey, lease, or sell property 43428
for residential services and supported living and enter into loan 43429
agreements, including mortgages, for the acquisition of such 43430
property. A county board is not required to comply with provisions 43431
of Chapter 307. of the Revised Code providing for competitive 43432
bidding or sheriff sales in the acquisition, lease, conveyance, or 43433
sale of property under this division, but the acquisition, lease, 43434
conveyance, or sale must be at fair market value determined by 43435
appraisal of one or more disinterested persons appointed by the 43436
board. 43437

Any action taken by a county board under this division that 43438
will incur debt on the part of the county shall be taken in 43439
accordance with Chapter 133. of the Revised Code. A county board 43440
shall not incur any debt on the part of the county without the 43441
prior approval of the board of county commissioners. 43442

(B)(1) To the extent that resources are available, in 43443
addition to sheltered employment and work activities provided as 43444

adult services pursuant to division (A)(3) of section 5126.05 of 43445
the Revised Code, a county board of mental retardation and 43446
developmental disabilities may provide or arrange for job 43447
training, vocational evaluation, and community employment services 43448
to mentally retarded and developmentally disabled individuals who 43449
are age eighteen and older and not enrolled in a program or 43450
service under Chapter 3323. of the Revised Code or age sixteen or 43451
seventeen and eligible for adult services under rules adopted by 43452
the director of mental retardation and developmental disabilities 43453
under Chapter 119. of the Revised Code. These services shall be 43454
provided in accordance with the individual's individual service or 43455
habilitation plan and shall include support services specified in 43456
the plan. 43457

(2) A county board may, in cooperation with the Ohio 43458
rehabilitation services commission, seek federal funds for job 43459
training and community employment. 43460

(3) A county board may contract with any agency, board, or 43461
other entity that is accredited by the commission on accreditation 43462
of rehabilitation facilities to provide services. A county board 43463
that is accredited by the commission on accreditation of 43464
rehabilitation facilities may provide services for which it is 43465
certified by the commission. 43466

(C) To the extent that resources are available, a county 43467
board may provide services to an individual with mental 43468
retardation or other developmental disability in addition to those 43469
provided pursuant to this section, section 5126.05 of the Revised 43470
Code, or any other section of this chapter. The services shall be 43471
provided in accordance with the individual's habilitation or 43472
service plan and may be provided in collaboration with other 43473
entities of state or local government. 43474

Sec. 5126.053. (A) As used in this section, "effective tax 43475

rate" has the same meaning as in section 5126.16 of the Revised Code. 43476
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(B) Notwithstanding sections 5126.12 and 5126.15 of the Revised Code with regard to the distribution of state subsidies to county boards of mental retardation and developmental disabilities, the department of mental retardation and developmental disabilities shall, except as provided in division (D) of this section, reduce the funds provided under those sections to a county board in each year that the board, on the first day of January of that year, has an effective tax rate of less than one and one-half mills for general operations for programs under which the board provides or arranges the following: 43478
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(1) Early childhood services pursuant to section 5126.05 of the Revised Code for children under age three; 43488
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(2) Adult services pursuant to section 5126.05 and division (B) of section 5126.051 of the Revised Code for individuals age sixteen or older; 43490
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(3) ~~Case management services~~ Service and support administration pursuant to section 5126.15 of the Revised Code. 43493
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(C) If a county board is subject to the reduction required by this section, payments to the county board under sections 5126.12 and 5126.15 of the Revised Code shall be made in the same percentage that the board's effective tax rate is of one and one-half mills. 43495
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(D) A county board subject to the reduction required by this section may appeal to the department for an exemption from the reduction. The board may present evidence of its attempts to obtain passage of levies and any other extenuating circumstances the board considers relevant. The department shall grant an exemption if it determines that the board has made good faith efforts to obtain an effective tax rate of at least one and 43500
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one-half mills for general operations for programs under which the 43507
services described in division (B) of this section are provided 43508
and arranged or that there are extenuating circumstances. 43509

Sec. 5126.054. (A) Each county board of mental retardation 43510
and developmental disabilities shall, by resolution, develop a 43511
three-calendar year plan that includes all of the following 43512
components: 43513

(1) An assessment component that includes all of the 43514
following: 43515

(a) The number of individuals with mental retardation or 43516
other developmental disability residing in the county who need the 43517
level of care provided by an intermediate care facility for the 43518
mentally retarded, may seek home and community-based services, are 43519
given priority for the services pursuant to division (D) of 43520
section 5126.042 of the Revised Code; the service needs of those 43521
individuals; and the projected annualized cost for services; 43522

(b) The source of funds available to the county board to pay 43523
the nonfederal share of medicaid expenditures that the county 43524
board is required by division (A) of section 5126.056 of the 43525
Revised Code to pay; 43526

(c) Any other applicable information or conditions that the 43527
department of mental retardation and developmental disabilities 43528
requires as a condition of approving the plan under section 43529
5123.046 of the Revised Code. 43530

(2) A component that provides for the recruitment, training, 43531
and retention of existing and new direct care staff necessary to 43532
implement services included in individualized service plans, 43533
including behavior management services and health management 43534
services such as delegated nursing and other habilitation center 43535
services, and protect the health and welfare of individuals 43536

receiving services included in the individual's individualized 43537
service plan by complying with safeguards for unusual and major 43538
unusual incidents, day-to-day program management, and other 43539
requirements the department shall identify. A county board shall 43540
develop this component in collaboration with providers of 43541
medicaid-funded services with which the county board contracts. A 43542
county board shall include all of the following in the component: 43543

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(a) The source and amount of funds available for the 43545
component; 43546

(b) A plan and timeline for implementing the component with 43547
the medicaid providers under contract with the county board; 43548

(c) The mechanisms the county board shall use to ensure the 43549
financial and program accountability of the medicaid provider's 43550
implementation of the component. 43551

(3) A component that provides for the implementation of 43552
habilitation center services, medicaid case management services, 43553
and home and community-based services for individuals who begin to 43554
receive the services on or after the date the plan is approved 43555
under section 5123.046 of the Revised Code. A county board shall 43556
include all of the following in the component: 43557

(a) If the department of mental retardation and developmental 43558
disabilities or department of job and family services requires, an 43559
agreement to pay the nonfederal share of medicaid expenditures 43560
that the county board is required by division (A) of section 43561
5126.056 of the Revised Code to pay; 43562

(b) How the services are to be phased in over the period the 43563
plan covers, including how the county board will serve individuals 43564
on a waiting list established under division (C) of section 43565
5126.042 who are given priority status under division (D)(1) of 43566
that section; 43567

(c) Any agreement or commitment regarding the county board's funding of home and community-based services that the county board has with the department at the time the county board develops the component; 43568
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(d) Assurances adequate to the department that the county board will comply with all of the following requirements: 43572
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(i) 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; 43574
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(ii) 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. 43579
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(iii) 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 services manager employed by or under contract with a regional council that the county boards establish under section 5126.13 of the Revised Code. 43586
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(e) An agreement to comply with the method, developed by rules adopted under section 5123.0413 of the Revised Code, of paying for extraordinary costs, including extraordinary costs for services to individuals with mental retardation or other developmental disability, and ensuring the availability of adequate funds in the event a county property tax levy for services for individuals with mental retardation or other developmental disability fails; 43600
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(f) Programmatic and financial accountability measures and projected outcomes expected from the implementation of the plan; 43608
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(g) Any other applicable information or conditions that the department requires as a condition of approving the plan under section 5123.046 of the Revised Code. 43610
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(B) For the purpose of obtaining the department's approval under section 5123.046 of the Revised Code of the plan the county board develops under division (A) of this section, a county board shall do both of the following: 43613
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(1) Submit the components required by divisions (A)(1) and (2) of this section to the department not later than August 1, 2001; 43617
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(2) Submit the component required by division (A)(3) of this section to the department not later than November 1, 2001. 43620
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(C) A county board whose plan developed under division (A) of this section is approved by the department under section 5123.046 of the Revised Code shall update and renew the plan in accordance with a schedule the department shall develop. 43622
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Sec. 5126.055. (A) Except as provided in division (G) of this section, 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 43626
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shall, do all of the following for an individual with mental 43630
retardation or other developmental disability who resides in the 43631
county that the county board serves and seeks or receives home and 43632
community-based services: 43633

(1) Perform assessments and evaluations of the individual. As 43634
part of the assessment and evaluation process, the county board 43635
shall do all of the following: 43636

(a) Make a recommendation to the department of mental 43637
retardation and developmental disabilities on whether the 43638
department should approve or deny the individual's application for 43639
the services, including on the basis of whether the individual 43640
needs the level of care an intermediate care facility for the 43641
mentally retarded provides; 43642

(b) If the individual's application is denied because of the 43643
county board's recommendation and the individual requests a 43644
hearing under section 5101.35 of the Revised Code, present, with 43645
the department of mental retardation and developmental 43646
disabilities or department of job and family services, whichever 43647
denies the application, the reasons for the recommendation and 43648
denial at the hearing; 43649

(c) If the individual's application is approved, recommend to 43650
the departments of mental retardation and developmental 43651
disabilities and job and family services the services that should 43652
be included in the individual's individualized service plan and, 43653
if either department approves, reduces, denies, or terminates a 43654
service included in the individual's individualized service plan 43655
under section 5111.871 of the Revised Code because of the county 43656
board's recommendation, present, with the department that made the 43657
approval, reduction, denial, or termination, the reasons for the 43658
recommendation and approval, reduction, denial, or termination at 43659
a hearing under section 5101.35 of the Revised Code. 43660

(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; 43661
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(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; 43669
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(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 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. 43676
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(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 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; 43686
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(6) Monitor the services provided to the individual and ensure the individual's health, safety, and welfare. 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. 43693
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(7) Develop, with the individual and the provider of the individual's services, an effective individualized service plan that includes coordination of services, recommend that the departments of mental retardation and developmental disabilities and job and family services approve the plan, and implement the plan unless either department disapproves it; 43699
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(8) Have an investigative agent conduct investigations under section 5126.313 of the Revised Code that concern the individual; 43705
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(9) Have a service and support administrator perform the duties under division (B)(9) of section 5126.15 of the Revised Code that concern the individual. 43707
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(B) Except as provided in division (G) of this section, a county board 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 medicaid case management services or habilitation center services, other than habilitation center services for which a school district is required by division (E) of section 5111.041 of the Revised Code to pay the nonfederal share: 43710
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(1) Perform assessments and evaluations of the individual for the purpose of recommending to the departments of mental retardation and developmental disabilities and job and family services the services that should be included in the individual's 43720
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individualized service plan; 43724

(2) If the department of mental retardation and developmental 43725
disabilities or department of job and family services approves, 43726
reduces, denies, or terminates a service included in the 43727
individual's individualized service plan under section 5111.041 or 43728
5111.042 of the Revised Code because of the county board's 43729
recommendation under division (B)(1) of this section, present, 43730
with the department that made the approval, reduction, denial, or 43731
termination, the reasons for the recommendation and approval, 43732
reduction, denial, or termination at a hearing under section 43733
5101.35 of the Revised Code and inform the individual that the 43734
individual may file a complaint with the county board under 43735
section 5126.06 of the Revised Code at the same time the 43736
individual pursues an appeal under section 5101.35 of the Revised 43737
Code; 43738

(3) In accordance with rules the departments of mental 43739
retardation and developmental disabilities and job and family 43740
services shall adopt in accordance with Chapter 119. of the 43741
Revised Code governing the process for individuals to choose 43742
providers of medicaid case management services and habilitation 43743
center services, assist the individual in choosing the provider of 43744
the services. The rules shall provide for both of the following: 43745

(a) The county board providing the individual up-to-date 43746
information about qualified providers that the department of 43747
mental retardation and developmental disabilities shall make 43748
available to the county board; 43749

(b) If the individual chooses a provider who is qualified and 43750
willing to provide the services but is denied that provider, the 43751
individual receiving timely notice that the individual may request 43752
a hearing under section 5101.35 of the Revised Code and, at the 43753
hearing, the county board presenting evidence of the process for 43754
appropriate assistance in choosing providers. 43755

(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 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 services in accordance with the individual's approved individualized service plan;

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

(9) Have a service and support administrator perform the

<u>duties under division (B)(9) of section 5126.15 of the Revised Code that concern the individual.</u>	43787 43788
<u>(C) A county board shall perform its medicaid local administrative authority under this section in accordance with all of the following:</u>	43789 43790 43791
<u>(1) The county board's plan that the department of mental retardation and developmental disabilities approves under section 5123.046 of the Revised Code;</u>	43792 43793 43794
<u>(2) All applicable federal and state laws;</u>	43795
<u>(3) All applicable policies of the departments of mental retardation and developmental disabilities and job and family services and the United States department of health and human services;</u>	43796 43797 43798 43799
<u>(4) The department of job and family services' supervision under its authority under section 5111.01 of the Revised Code to act as the single state medicaid agency;</u>	43800 43801 43802
<u>(5) The department of mental retardation and developmental disabilities' oversight.</u>	43803 43804
<u>(D) The departments of mental retardation and developmental disabilities and job and family services shall communicate with and provide training to county boards regarding medicaid local administrative authority granted by this section. The communication and training shall include issues regarding audit protocols and other standards established by the United States department of health and human services that the departments determine appropriate for communication and training. County boards shall participate in the training. The departments shall assess the county board's compliance against uniform standards that the departments shall establish.</u>	43805 43806 43807 43808 43809 43810 43811 43812 43813 43814 43815
<u>(E) A county board may not delegate its medicaid local</u>	43816

administrative authority granted under this section but may 43817
contract with a person or government entity, including a council 43818
of governments, for assistance with its medicaid local 43819
administrative authority. A county board that enters into such a 43820
contract shall notify the director of mental retardation and 43821
developmental disabilities. The notice shall include the tasks and 43822
responsibilities that the contract gives to the person or 43823
government entity. The person or government entity shall comply in 43824
full with all requirements to which the county board is subject 43825
regarding the person or government entity's tasks and 43826
responsibilities under the contract. The county remains ultimately 43827
responsible for the tasks and responsibilities. 43828

(F) A county board that has medicaid local administrative 43829
authority under this section shall, through the departments of 43830
mental retardation and developmental disabilities and job and 43831
family services, reply to, and cooperate in arranging compliance 43832
with, a program or fiscal audit or program violation exception 43833
that a state or federal audit or review discovers. The department 43834
of job and family services shall timely notify the department of 43835
mental retardation and developmental disabilities and the county 43836
board of any adverse findings. After receiving the notice, the 43837
county board, in conjunction with the department of mental 43838
retardation and developmental disabilities, shall cooperate fully 43839
with the department of job and family services and timely prepare 43840
and send to the department a written plan of correction or 43841
response to the adverse findings. The county board is liable for 43842
any adverse findings that result from an action it takes or fails 43843
to take in its implementation of medicaid local administrative 43844
authority. 43845

(G)(1) If the department of mental retardation and 43846
developmental disabilities or department of job and family 43847
services determines that a county board's implementation of its 43848

medicaid local administrative authority under this section is 43849
deficient, the department that makes the determination shall 43850
require that county board do the following: 43851

(a) If the deficiency affects the health, safety, or welfare 43852
of an individual with mental retardation or other developmental 43853
disability, correct the deficiency within twenty-four hours; 43854
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(b) If the deficiency does not affect the health, safety, or 43856
welfare of an individual with mental retardation or other 43857
developmental disability, receive technical assistance from the 43858
department or submit a plan of correction to the department that 43859
is acceptable to the department within sixty days and correct the 43860
deficiency within the time required by the plan of correction. 43861

(2) If the county board fails to correct a deficiency within 43862
the time required by division (G)(1) of this section to the 43863
satisfaction of the department, or submit an acceptable plan of 43864
correction within the time required by division (G)(1)(b) of this 43865
section, the department shall issue an order terminating the 43866
county board's medicaid local administrative authority over all or 43867
part of home and community-based services, medicaid managed care 43868
services, habilitation center services, all or part of two of 43869
those services, or all or part of all three of those services. The 43870
department shall provide a copy of the order to the board of 43871
county commissioners, probate judge, county auditor, and president 43872
and superintendent of the county board. The department shall 43873
specify in the order the medicaid local administrative authority 43874
that the department is terminating, the reason for the 43875
termination, and the county board's option and responsibilities 43876
under this division. 43877

A county board whose medicaid local administrative authority 43878
is terminated may, no later than thirty days after the department 43879
issues the termination order, recommend to the department that 43880

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.

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, 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 authority, the department may utilize employees of the department, management personnel from another county board, or other individuals who are not employed by or affiliated with in any manner a person or government entity that provides home and community-based services, medicaid case management services, or habilitation center services pursuant to a contract with any county board. The administrative receiver shall assume full administrative responsibility for the county board's services for which the county board's medicaid local administrative authority is terminated.

The contracting authority or administrative receiver shall develop and submit to the department a plan of correction to remediate the problems that caused the department to issue the termination order. If, after reviewing the plan, the department

approves it, the contracting authority or administrative receiver shall implement the plan. 43913
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The county board shall transfer control of state and federal funds it is otherwise eligible to receive for the services for which the county board's medicaid local administrative authority is terminated and funds the county board may use under division (B) of section 5126.056 of the Revised Code to pay the nonfederal share of the services that the county board is required by division (A) of that section to pay. The county board shall transfer control of the funds to the contracting authority or administrative receiver administering the services. The amount the county board shall transfer shall be the amount necessary for the contracting authority or administrative receiver to fulfill its duties in administering the services, including its duties to pay its personnel for time worked, travel, and related matters. If the county board fails to make the transfer, the department may withhold the state and federal funds from the county board and bring a mandamus action against the county board in the court of common pleas of the county served by the county board or in the Franklin county court of common pleas. The mandamus action may not require that the county board transfer any funds other than the funds the county board is required by division (G)(2) of this section to transfer. 43915
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The contracting authority or administrative receiver has the right to authorize the payment of bills in the same manner that the county board may authorize payment of bills under this chapter and section 319.16 of the Revised Code. 43936
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Sec. 5126.056. (A) A county board of mental retardation and developmental disabilities that has medicaid local administrative authority under division (A) of section 5126.055 of the Revised Code for home and community-based services shall pay the 43940
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nonfederal share of medicaid expenditures for such services 43944
provided to an individual with mental retardation or other 43945
developmental disability who the county board determines under 43946
section 5126.041 of the Revised Code is eligible for county board 43947
services unless division (C)(2) of section 5123.047 of the Revised 43948
Code requires the department of mental retardation and 43949
developmental disabilities to pay the nonfederal share. 43950

A county board that has medicaid local administrative 43951
authority under division (B) of section 5126.055 of the Revised 43952
Code for medicaid case management services shall pay the 43953
nonfederal share of medicaid expenditures for such services 43954
provided to an individual with mental retardation or other 43955
developmental disability who the county board determines under 43956
section 5126.041 of the Revised Code is eligible for county board 43957
services unless division (B)(2) of section 5123.047 of the Revised 43958
Code requires the department of mental retardation and 43959
developmental disabilities to pay the nonfederal share. 43960

A county board shall pay the nonfederal share of medicaid 43961
expenditures for habilitation center services when required to do 43962
so by division (D) of section 5111.041 of the Revised Code. 43963

(B) A county board may use the following funds to pay the 43964
nonfederal share of the services that the county board is required 43965
by division (A) of this section to pay: 43966

(1) To the extent consistent with the levy that generated the 43967
taxes, the following taxes: 43968

(a) Taxes levied pursuant to division (L) of section 5705.19 43969
of the Revised Code and section 5705.222 of the Revised Code; 43970

(b) Taxes levied under section 5705.191 of the Revised Code 43971
that the board of county commissioners allocates to the county 43972
board to pay the nonfederal share of the services. 43973

(2) Funds that the department of mental retardation and developmental disabilities distributes to the county board under sections 5126.11, 5126.12, 5126.15, 5126.18, and 5126.44 of the Revised Code; 43974
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(3) Funds that the department allocates to the county board for habilitation center services provided under section 5111.041 of the Revised Code; 43978
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(4) Earned federal revenue funds the county board receives for medicaid services the county board provides pursuant to the county board's valid medicaid provider agreement. 43981
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(C) If by December 31, 2001, the United States secretary of health and human services approves at least five hundred more slots for home and community-based services for calendar year 2002 than were available for calendar year 2001, each county board shall provide, by the last day of calendar year 2001, assurances to the department of mental retardation and developmental disabilities that the county board will have for calendar year 2002 at least one-third of the value of one-half, effective mill levied in the county the preceding year available to pay the nonfederal share of the services that the county board is required by division (A) of this section to pay. 43984
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If by December 31, 2002, the United States secretary approves at least five hundred more slots for home and community-based services for calendar year 2003 than were available for calendar year 2002, each county board shall provide, by the last day of calendar year 2002, assurances to the department that the county board will have for calendar year 2003 at least two-thirds of the value of one-half, effective mill levied in the county the preceding year available to pay the nonfederal share of the services that the county board is required by division (A) of this section to pay. 43995
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If by December 31, 2003, the United States secretary approves 44005
at least five hundred more slots for home and community-based 44006
services for calendar year 2004 than were available for calendar 44007
year 2003, each county board shall provide, by the last day of 44008
calendar year 2003 and each calendar year thereafter, assurances 44009
to the department that the county board will have for calendar 44010
year 2004 and each calendar year thereafter at least the value of 44011
one-half, effective mill levied in the county the preceding year 44012
available to pay the nonfederal share of the services that the 44013
county board is required by division (A) of this section to pay. 44014

(D) Each year, each county board shall adopt a resolution 44015
specifying the amount of funds it will use in the next year to pay 44016
the nonfederal share of the services that the county board is 44017
required by division (A) of this section to pay. The amount 44018
specified shall be adequate to assure that the services will be 44019
available in the county in a manner that conforms to all 44020
applicable state and federal laws. A county board shall state in 44021
its resolution that the payment of the nonfederal share represents 44022
an ongoing financial commitment of the county board. A county 44023
board shall adopt the resolution in time for the county auditor to 44024
make the determination required by division (E) of this section. 44025

(E) Each year, a county auditor shall determine whether the 44026
amount of funds a county board specifies in the resolution it 44027
adopts under division (D) of this section will be available in the 44028
following year for the county board to pay the nonfederal share of 44029
the services that the county board is required by division (A) of 44030
this section to pay. The county auditor shall make the 44031
determination not later than the last day of the year before the 44032
year in which the funds are to be used. 44033

Sec. 5126.06. (A) Except as provided in division (B) of this 44034
section and section 5126.035 of the Revised Code, any person who 44035

has a complaint involving any of the programs, services, policies, 44036
or administrative practices of a county board of mental 44037
retardation and developmental disabilities or any of the entities 44038
under contract with the county board, may file a complaint with 44039
the board. Prior to commencing a civil action regarding the 44040
complaint, a person shall attempt to have the complaint resolved 44041
through the administrative resolution process established in the 44042
rules adopted under section 5123.043 of the Revised Code. After 44043
exhausting the administrative resolution process, the person may 44044
commence a civil action if the complaint is not settled to the 44045
person's satisfaction. 44046

(B) An employee of a county board may not file under this 44047
section a complaint related to the terms and conditions of 44048
employment of the employee. 44049

Sec. 5126.071. (A) As used in this section, "minority 44050
business enterprise" has the meaning given in division (E)(1) of 44051
section 122.71 of the Revised Code. 44052

(B) Any minority business enterprise that desires to bid on a 44053
contract under division (C) or (D) of this section shall first 44054
apply to the equal employment opportunity coordinator in the 44055
department of administrative services for certification as a 44056
minority business enterprise. The coordinator shall approve the 44057
application of any minority business enterprise that complies with 44058
the rules adopted under section 122.71 of the Revised Code. The 44059
coordinator shall prepare and maintain a list of minority business 44060
enterprises certified under this section. 44061

(C) From the contracts to be awarded for the purchases of 44062
equipment, materials, supplies, insurance, and nonprogram 44063
services, other than contracts entered into and exempt under 44064
sections 307.86 and 5126.05 of the Revised Code, each county board 44065
of mental retardation and developmental disabilities shall select 44066

a number of contracts with an aggregate value of approximately 44067
fifteen per cent of the total estimated value of such contracts to 44068
be awarded in the current calendar year. The board shall set aside 44069
the contracts so selected for bidding by minority business 44070
enterprises only. The bidding procedures for such contracts shall 44071
be the same as for all other contracts awarded under section 44072
307.86 of the Revised Code, except that only minority business 44073
enterprises certified and listed under division (B) of this 44074
section shall be qualified to submit bids. Contracts set aside and 44075
awarded under this section shall not include contracts for the 44076
purchase of ~~program~~ services such as direct and ancillary 44077
services, ~~or case management service and support administration,~~ 44078
residential services, and family ~~resource~~ support services. 44079

(D) To the extent that a board is authorized to enter into 44080
contracts for construction which are not exempt from the 44081
competitive bidding requirements of section 307.86 of the Revised 44082
Code, the board shall set aside a number of contracts the 44083
aggregate value of which equals approximately five per cent of the 44084
aggregate value of construction contracts for the current calendar 44085
year for bidding by minority business enterprises only. The 44086
bidding procedures for the contracts set aside for minority 44087
business enterprises shall be the same as for all other contracts 44088
awarded by the board, except that only minority business 44089
enterprises certified and listed under division (B) of this 44090
section shall be qualified to submit bids. 44091

Any contractor awarded a construction contract pursuant to 44092
this section shall make every effort to ensure that certified 44093
minority business subcontractors and ~~materialmen~~ materials 44094
suppliers participate in the contract. In the case of contracts 44095
specified in this division, the total value of subcontracts 44096
awarded to and materials and services purchased from minority 44097
businesses shall be at least ten per cent of the total value of 44098

the contract, wherever ~~possible~~ possible and whenever the 44099
contractor awards subcontracts or purchases materials or services. 44100

(E) In the case of contracts set aside under divisions (C) 44101
and (D) of this section, if no bid is submitted by a minority 44102
business enterprise, the contract shall be awarded according to 44103
normal bidding procedures. The board shall from time to time set 44104
aside such additional contracts as are necessary to replace those 44105
contracts previously set aside on which no minority business 44106
enterprise bid. 44107

(F) This section does not preclude any minority business 44108
enterprise from bidding on any other contract not specifically set 44109
aside for minority business enterprises. 44110

(G) Within ninety days after the beginning of each calendar 44111
year, each county board of mental retardation and developmental 44112
disabilities shall file a report with the department of mental 44113
retardation and developmental disabilities that shows for that 44114
calendar year the name of each minority business enterprise with 44115
which the board entered into a contract, the value and type of 44116
each such contract, the total value of contracts awarded under 44117
divisions (C) and (D) of this section, the total value of 44118
contracts awarded for the purchases of equipment, materials, 44119
supplies, or services, other than contracts entered into under the 44120
exemptions of sections 307.86 and 5126.05 of the Revised Code, and 44121
the total value of contracts entered into for construction. 44122

(H) Any person who intentionally misrepresents ~~himself~~ that 44123
person as owning, controlling, operating, or participating in a 44124
minority business enterprise for the purpose of obtaining 44125
contracts or any other benefits under this section shall be guilty 44126
of theft by deception as provided for in section 2913.02 of the 44127
Revised Code. 44128

Sec. 5126.08. (A) The director of mental retardation and 44129

developmental disabilities shall adopt rules in accordance with 44130
Chapter 119. of the Revised Code for all programs and services 44131
offered by a county board of mental retardation and developmental 44132
disabilities. Such rules shall include, but are not limited to, 44133
the following: 44134

(1) Determination of what constitutes a program or service; 44135

(2) Standards to be followed by a board in administering, 44136
providing, arranging, or operating programs and services; 44137

(3) Standards for determining the nature and degree of mental 44138
retardation, including mild mental retardation, or developmental 44139
disability; 44140

(4) Standards for determining eligibility for programs and 44141
services under sections 5126.042 and 5126.15 of the Revised Code; 44142

(5) Procedures for obtaining consent for the arrangement of 44143
services under section 5126.31 of the Revised Code and for 44144
obtaining signatures on individual service plans under that 44145
section; 44146

(6) Specification of the ~~case management services~~ service and 44147
support administration to be provided by a county board and 44148
standards for resolving grievances in connection with ~~case~~ 44149
~~management services~~ service and support administration; 44150

(7) Standards for the provision of environmental 44151
modifications, including standards that require adherence to all 44152
applicable state and local building codes; 44153

(8) Standards for the provision of specialized medical, 44154
adaptive, and assistive equipment, supplies, and supports. 44155

(B) The director shall be the final authority in determining 44156
the nature and degree of mental retardation or developmental 44157
disability. 44158

Sec. 5126.11. (A) As used in this section, "respite care" 44159
means appropriate, short-term, temporary care that is provided to 44160
a mentally retarded or developmentally disabled person to sustain 44161
the family structure or to meet planned or emergency needs of the 44162
family. 44163

(B) Subject to rules adopted by the director of mental 44164
retardation and developmental disabilities, and subject to the 44165
availability of money from state and federal sources, the county 44166
board of mental retardation and developmental disabilities shall 44167
establish a family support services program. Under such a program, 44168
the board shall make payments to an individual with mental 44169
retardation or other developmental disability or the family of an 44170
individual with mental retardation or other developmental 44171
disability who desires to remain in and be supported in the family 44172
home. Payments shall be made for all or part of costs incurred or 44173
estimated to be incurred for services that would promote 44174
self-sufficiency and normalization, prevent or reduce 44175
inappropriate institutional care, and further the unity of the 44176
family by enabling the family to meet the special needs of the 44177
individual and to live as much like other families as possible. 44178
Payments may be made in the form of reimbursement for expenditures 44179
or in the form of vouchers to be used to purchase services. 44180

(C) Payment shall not be made under this section to an 44181
individual or the individual's family if the individual is living 44182
in a residential facility that is providing residential services 44183
under contract with the department of mental retardation and 44184
developmental disabilities or a county board. 44185

(D) Payments may be made for the following services: 44186

(1) Respite care, in or out of the home; 44187

(2) Counseling, supervision, training, and education ~~for~~ of 44188
the individual, the individual's caregivers, and members of the 44189

individual's family that aid the family in providing proper care 44190
for the individual ~~and~~, provide for the special needs of the 44191
family, and assist in all aspects of the individual's daily 44192
living; 44193

(3) Special diets, purchase or lease of special equipment, or 44194
modifications of the home, if such diets, equipment, or 44195
modifications are necessary to improve or facilitate the care and 44196
living environment of the individual; 44197

(4) Providing support necessary for the individual's 44198
continued skill development, including such services as 44199
development of interventions to cope with unique problems that may 44200
occur within the complexity of the family, enrollment of the 44201
individual in special summer programs, provision of appropriate 44202
leisure activities, and other social skills development 44203
activities; 44204

(5) Any other services that are consistent with the purposes 44205
specified in division (B) of this section and specified in the 44206
individual's service plan. 44207

(E) In order to be eligible for payments under a family 44208
support services program, the individual or the individual's 44209
family must reside in the county served by the county board, and 44210
the individual must be in need of habilitation. Payments shall be 44211
adjusted for income in accordance with the payment schedule 44212
established in rules adopted under this section. Payments shall be 44213
made only after the county board has taken into account all other 44214
available assistance for which the individual or family is 44215
eligible. 44216

(F) Before incurring expenses for a service for which payment 44217
will be sought under a family support services program, the 44218
individual or family shall apply to the county board for a 44219
determination of eligibility and approval of the service. The 44220
service need not be provided in the county served by the county 44221

board. After being determined eligible and receiving approval for 44222
the service, the individual or family may incur expenses for the 44223
service or use the vouchers received from the county board for the 44224
purchase of the service. 44225

If the county board refuses to approve a service, an appeal 44226
may be made in accordance with rules adopted by the department 44227
under this section. 44228

(G) To be reimbursed for expenses incurred for approved 44229
services, the individual or family shall submit to the county 44230
board a statement of the expenses incurred accompanied by any 44231
evidence required by the board. To redeem vouchers used to 44232
purchase approved services, the entity that provided the service 44233
shall submit to the county board evidence that the service was 44234
provided and a statement of the charges. The county board shall 44235
make reimbursements and redeem vouchers no later than forty-five 44236
days after it receives the statements and evidence required by 44237
this division. 44238

(H) A county board shall consider the following objectives in 44239
carrying out a family support services program: 44240

(1) Enabling individuals to return to their families from an 44241
institution under the jurisdiction of the department of mental 44242
retardation and developmental disabilities; 44243

(2) Enabling individuals found to be subject to 44244
institutionalization by court order under section 5123.76 of the 44245
Revised Code to remain with their families with the aid of 44246
payments provided under this section; 44247

(3) Providing services to eligible children and adults 44248
currently residing in the community; 44249

(4) Providing services to individuals with developmental 44250
disabilities who are not receiving other services from the board. 44251

(I) The director shall adopt, and may amend and rescind, 44252
rules for the implementation of family support services programs 44253
by county boards. Such rules shall include the following: 44254

(1) A payment schedule adjusted for income; 44255

(2) A formula for distributing to county boards the money 44256
appropriated for family support services; 44257

(3) Standards for supervision, training, and quality control 44258
in the provision of respite care services; 44259

(4) Eligibility standards and procedures for providing 44260
temporary emergency respite care; 44261

(5) Procedures for hearing and deciding appeals made under 44262
division (F) of this section; 44263

(6) Requirements to be followed by county boards regarding 44264
reports submitted under division (K) of this section. 44265

Rules adopted under divisions (I)(1) and (2) of this section 44266
shall be adopted in accordance with section 111.15 of the Revised 44267
Code. Rules adopted under divisions (I)(3) to (6) of this section 44268
shall be adopted in accordance with Chapter 119. of the Revised 44269
Code. 44270

(J) All individuals certified by the superintendent of the 44271
county board as eligible for temporary emergency respite care in 44272
accordance with rules adopted under this section shall be 44273
considered eligible for temporary emergency respite care for not 44274
more than five days to permit the determination of eligibility for 44275
family support services. The requirements of divisions (E) and (F) 44276
of this section do not apply to temporary emergency respite care. 44277
44278

(K) On the first day of July of each year, the department of 44279
mental retardation and developmental disabilities shall distribute 44280
to county boards money appropriated for family support services. A 44281

county board shall use no more than seven per cent of the funds 44282
for administrative costs. Each county board shall submit reports 44283
to the department on payments made under this section. The reports 44284
shall be submitted at those times and in the manner specified in 44285
rules adopted under this section. 44286

(L) The county board shall not be required to make payments 44287
for family support services at a level that exceeds available 44288
state and federal funds for such payments. 44289

Sec. 5126.12. (A) As used in this section: 44290

(1) "Approved school age ~~unit~~ class" means a class ~~or unit~~ 44291
operated by a county board of mental retardation and developmental 44292
disabilities and ~~approved~~ funded by the ~~state board~~ department of 44293
education under ~~division (D)~~ of section ~~3317.05~~ 3317.20 of the 44294
Revised Code. 44295

(2) "Approved preschool unit" means a class or unit operated 44296
by a county board of mental retardation and developmental 44297
disabilities and approved by the state board of education under 44298
division (B) of section 3317.05 of the Revised Code. 44299

(3) "Active treatment" means a continuous treatment program, 44300
which includes aggressive, consistent implementation of a program 44301
of specialized and generic training, treatment, health services, 44302
and related services, that is directed toward the acquisition of 44303
behaviors necessary for an individual with mental retardation or 44304
other developmental disability to function with as much 44305
self-determination and independence as possible and toward the 44306
prevention of deceleration, regression, or loss of current optimal 44307
functional status. 44308

(4) "Eligible for active treatment" means that an individual 44309
with mental retardation or other developmental disability resides 44310
in an intermediate care facility for the mentally retarded 44311

certified under Title XIX of the "Social Security Act," 49 Stat. 44312
620 (1935), 42 U.S.C. 301, as amended; resides in a state 44313
institution operated by the department of mental retardation and 44314
developmental disabilities; or is enrolled in a home and 44315
community-based services waiver program administered by the 44316
department of mental retardation and developmental disabilities as 44317
part of the medical assistance program established under section 44318
5111.01 of the Revised Code. 44319

(5) "Community alternative funding system" means the program 44320
under which habilitation center services are reimbursed under the 44321
~~medical assistance~~ medicaid program pursuant to section 5111.041 44322
of the Revised Code and rules adopted under that section. 44323

~~(6) "Community employment program" means community employment 44324
services provided outside of a sheltered workshop setting under 44325
which the person earns competitive wages for the performance of 44326
work. 44327~~

~~(7) "Traditional adult services" means vocational and 44328
nonvocational activities conducted within a sheltered workshop or 44329
adult activity center or supportive home services. 44330~~

(B) Each county board of mental retardation and developmental 44331
disabilities shall certify to the director of mental retardation 44332
and developmental disabilities all of the following: 44333

(1) On or before the fifteenth day of October, the average 44334
daily membership for the first full week of programs and services 44335
during October receiving: 44336

(a) Early childhood services provided pursuant to section 44337
5126.05 of the Revised Code for children who are less than three 44338
years of age on the thirtieth day of September of the academic 44339
year; 44340

(b) Special education for handicapped children in approved 44341
school age ~~units~~ classes; 44342

(c) Adult services for persons sixteen years of age and older 44343
operated pursuant to section 5126.05 and division (B) of section 44344
5126.051 of the Revised Code. Separate counts shall be made for 44345
the following: 44346

(i) Persons enrolled in traditional adult services who are 44347
eligible for but not enrolled in active treatment under the 44348
community alternative funding system; 44349

(ii) Persons enrolled in traditional adult services who are 44350
eligible for and enrolled in active treatment under the community 44351
alternative funding system; 44352

(iii) Persons enrolled in traditional adult services but who 44353
are not eligible for active treatment under the community 44354
alternative funding system; 44355

(iv) Persons participating in community employment services. 44356
To be counted as participating in community employment services, a 44357
person must have spent an average of no less than ten hours per 44358
week in that employment during the preceding six months. 44359

(d) Other programs in the county for individuals with mental 44360
retardation and developmental disabilities that have been approved 44361
for payment of subsidy by the department of mental retardation and 44362
developmental disabilities. 44363

The membership in each such program and service in the county 44364
shall be reported on forms prescribed by the department of mental 44365
retardation and developmental disabilities. 44366

The department of mental retardation and developmental 44367
disabilities shall adopt rules defining full-time equivalent 44368
enrollees and for determining the average daily membership 44369
therefrom, except that certification of average daily membership 44370
in approved school age ~~units~~ classes shall be in accordance with 44371
rules adopted by the state board of education. The average daily 44372
membership figure shall be determined by dividing the amount 44373

representing the sum of the number of enrollees in each program or 44374
service in the week for which the certification is made by the 44375
number of days the program or service was offered in that week. No 44376
enrollee may be counted in average daily membership for more than 44377
one program or service. 44378

(2) By the fifteenth day of December, the number of children 44379
enrolled in approved preschool units on the first day of December; 44380

(3) On or before the thirtieth day of March, an itemized 44381
report of all income and operating expenditures for the 44382
immediately preceding calendar year, in the format specified by 44383
the department of mental retardation and developmental 44384
disabilities; 44385

(4) By the fifteenth day of February, a report of the total 44386
annual cost per enrollee for operation of programs and services in 44387
the preceding calendar year. The report shall include a grand 44388
total of all programs operated, the cost of the individual 44389
programs, and the sources of funds applied to each program. 44390

(5) That each required certification and report is in 44391
accordance with rules established by the department of mental 44392
retardation and developmental disabilities and the state board of 44393
education for the operation and subsidization of the programs and 44394
services. 44395

(C) To compute payments under this section to the board for 44396
the fiscal year, the department of mental retardation and 44397
developmental disabilities shall use the certification of average 44398
daily membership required by division (B)(1) of this section 44399
exclusive of the average daily membership in any approved school 44400
age ~~unit~~ class and the number in any approved preschool unit. 44401

(D) The department shall pay each county board for each 44402
fiscal year an amount equal to nine hundred fifty dollars times 44403
the certified number of persons who on the first day of December 44404

of the academic year are under three years of age and are not in 44405
an approved preschool unit. For persons who are at least age 44406
sixteen and are not in an approved school age unit class, the 44407
department shall pay each county board for each fiscal year the 44408
following amounts: 44409

(1) One thousand dollars times the certified average daily 44410
membership of persons enrolled in traditional adult services who 44411
are eligible for but not enrolled in active treatment under the 44412
community alternative funding system; 44413

(2) One thousand two hundred dollars times the certified 44414
average daily membership of persons enrolled in traditional adult 44415
services who are eligible for and enrolled in active treatment 44416
under the community alternative funding system; 44417

(3) No less than one thousand five hundred dollars times the 44418
certified average daily membership of persons enrolled in 44419
traditional adult services but who are not eligible for active 44420
treatment under the community alternative funding system; 44421

(4) No less than one thousand five hundred dollars times the 44422
certified average daily membership of persons participating in 44423
community employment services. 44424

(E) The department shall distribute this subsidy to county 44425
boards in semiannual installments of equal amounts. The 44426
installments shall be made not later than the thirty-first day of 44427
August and the thirty-first day of January. 44428

(F) The director of mental retardation and developmental 44429
disabilities shall make efforts to obtain increases in the 44430
subsidies for early childhood services and adult services so that 44431
the amount of the subsidies is equal to at least fifty per cent of 44432
the statewide average cost of those services minus any applicable 44433
federal reimbursements for those services. The director shall 44434
advise the director of budget and management of the need for any 44435

such increases when submitting the biennial appropriations request 44436
for the department. 44437

(G) In determining the reimbursement of a county board for 44438
the provision of ~~case management and~~ service and support 44439
administration, family support services, and other services 44440
required or approved by the director for which children three 44441
through twenty-one years of age are eligible, the department shall 44442
include the average daily membership in approved school age or 44443
preschool units. The department, in accordance with this section 44444
and upon receipt and approval of the certification required by 44445
this section and any other information it requires to enable it to 44446
determine a board's payments, shall pay the agency providing the 44447
specialized training the amounts payable under this section. 44448

Sec. 5126.14. The entity responsible for the habilitation 44449
management included in adult day habilitation services the program 44450
management included in, residential services, and the program 44451
management included in supported living shall provide 44452
administrative oversight by doing all of the following: 44453

(A) Having available supervisory personnel to monitor and 44454
ensure implementation of all interventions in accordance with 44455
every individual service plan implemented by the staff who work 44456
with the individuals receiving the services; 44457

(B) Providing appropriate training and technical assistance 44458
for all staff who work with the individuals receiving services; 44459

(C) Communicating with service and support administration 44460
staff for the purpose of coordinating activities to ensure that 44461
services are provided to individuals in accordance with individual 44462
service plans and intended outcomes; 44463

(D) Monitoring for major unusual incidents and cases of 44464
abuse, neglect, or exploitation involving the individual under the 44465

care of staff who are providing the services; taking immediate 44466
actions as necessary to maintain the health, safety, and welfare 44467
of the individuals receiving the services; and providing notice of 44468
major unusual incidents and suspected cases of abuse, neglect, or 44469
exploitation to the investigative agent for the county board of 44470
mental retardation and developmental disabilities; 44471

(E) Performing other administrative duties as required by 44472
state or federal law or by the county board of mental retardation 44473
and developmental disabilities through contracts with providers. 44474

Sec. 5126.15. (A) A county board of mental retardation and 44475
developmental disabilities shall provide ~~the case management~~ 44476
~~services specified in rules adopted by the department of mental~~ 44477
~~retardation and developmental disabilities under section 5126.08~~ 44478
~~of the Revised Code to individuals who are eligible for other~~ 44479
~~programs and services. A county board shall make determinations of~~ 44480
~~eligibility for case management services in accordance with~~ 44481
~~standards established in rules adopted by the department under~~ 44482
~~section 5126.08 of the Revised Code.~~ 44483

~~Case management services shall be a mechanism to improve the~~ 44484
~~quality and appropriateness of services rendered to individuals.~~ 44485
~~In carrying out case management responsibilities, including~~ 44486
~~monitoring the provision of services to individuals, case managers~~ 44487
~~shall be impartial toward all providers of services and shall show~~ 44488
~~no preference toward any provider.~~ 44489

~~(B) A county board may provide case management services~~ 44490
~~directly or by contracting for the provision of services with~~ 44491
~~other public or private, nonprofit or profit-making agencies or~~ 44492
~~organizations. The county board or the agency or organization with~~ 44493
~~which the board contracts for case management services shall~~ 44494
~~establish a separate service unit for case management, responsible~~ 44495
~~directly to the superintendent of the county board and independent~~ 44496

~~of all other programs of the county board, agency, or
organization.~~ 44497
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~~Persons employed as county board case managers shall be
assigned no program duties by the county board. County board case
managers service and support administration to each individual who
is eligible for other services of the board. A board may provide
service and support administration to an individual who is not
eligible for other services of the board. Service and support
administration shall be provided in accordance with rules adopted
under section 5126.08 of the Revised Code.~~ 44499
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~~A board may provide service and support administration by
directly employing service and support administrators or by
contracting with entities for the performance of service and
support administration. Individuals employed or under contract as
service and support administrators shall not be in the same
collective bargaining unit as employees who perform duties that
are not administrative.~~ 44507
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~~Individuals employed by a board as service and support
administrators shall not be assigned responsibilities for
implementing services for individuals and shall not be employed by
or serve in a decision-making or policy-making capacity for any
other ~~agency or organization~~ entity that provides programs or
services to individuals with mental retardation or developmental
disabilities. An individual employed as a conditional status
service and support administrator shall perform the duties of
service and support administration only under the supervision of a
management employee who is a service and support administration
supervisor or a professional employee who is a service and support
administrator.~~ 44514
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~~A county board that is a party to an agreement with other
county boards or other agencies or organizations under which
facilities, programs, or services are operated or provided shall~~ 44526
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~~establish a clear policy regarding the relationships between the case managers and the boards, agencies, or organizations that are parties to the agreement.~~

~~(C) Each county board shall develop procedures, in accordance with rules adopted by the department of mental retardation and developmental disabilities, for the resolution of grievances in connection with case management services.~~

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

~~(1) Establish an individual's eligibility for the services of the county board of mental retardation and developmental disabilities;~~

~~(2) Assess individual needs for services;~~

~~(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;~~

~~(4) Establish budgets for services based on the individual's assessed needs and preferred ways of meeting those needs;~~

~~(5) Assist individuals in making selections from among the providers they have chosen;~~

~~(6) Ensure that services are effectively coordinated and provided by appropriate providers;~~

~~(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; 44559

(8) Perform quality assurance reviews as a distinct function 44560
of service and support administration; 44561

(9) Incorporate the results of quality assurance reviews and 44562
identified trends and patterns of unusual incidents and major 44563
unusual incidents into amendments of an individual's service plan 44564
for the purpose of improving and enhancing the quality and 44565
appropriateness of services rendered to the individual; 44566

(10) Ensure that each individual receiving services has a 44567
designated person who is responsible on a continuing basis for 44568
providing the individual with representation, advocacy, advice, 44569
and assistance related to the day-to-day coordination of services 44570
in accordance with the individual's service plan. The service and 44571
support administrator shall give the individual receiving services 44572
an opportunity to designate the person to provide daily 44573
representation. If the individual declines to make a designation, 44574
the administrator shall make the designation. In either case, the 44575
individual receiving services may change at any time the person 44576
designated to provide daily representation. 44577

(C) Subject to available funds, the department of mental 44578
retardation and developmental disabilities shall pay a county 44579
board an annual subsidy for ~~case management services if the ratio~~ 44580
~~of the board's average daily membership certified under section~~ 44581
~~5126.12 of the Revised Code to the number of case managers~~ 44582
~~employed by the board is at least equal to the minimum ratio~~ 44583
~~specified in rules the Department shall adopt in accordance with~~ 44584
~~Chapter 119. of the Revised Code~~ service and support 44585
administration. The amount of the subsidy shall be equal to the 44586
greater of twenty thousand dollars or two hundred dollars times 44587
the board's certified average daily membership. The payments shall 44588
be made in semiannual installments, which shall be made no later 44589
than the thirty-first day of August and the thirty-first day of 44590

January. Funds received shall be used solely for ~~case management~~ 44591
~~services~~ service and support administration. 44592

Sec. 5126.16. As used in sections 5126.16 to 5126.18 of the 44593
Revised Code: 44594

(A) "Taxable value" means the total taxable value of real and 44595
public utility property and of tangible personal property in a 44596
county as shown on the county auditor's tax lists. 44597

(B) "Taxes" means the total taxes levied pursuant to division 44598
(L) of section 5705.19 of the Revised Code or pursuant to that 44599
section and section 5705.222, as shown on the preceding year's tax 44600
lists of real and public utility property and tangible personal 44601
property, after making the reductions required by section 319.301 44602
of the Revised Code. 44603

(C) "Enrollment" means a county board of mental retardation 44604
and developmental disabilities' average daily membership of 44605
programs and services as certified under divisions (B)(1)(a), (b), 44606
and (c) and (B)(2) of section 5126.12 of the Revised Code, 44607
exclusive of individuals who are served solely through ~~case~~ 44608
~~management~~ service and support administration provided pursuant to 44609
section 5126.15 of the Revised Code or family support services 44610
provided pursuant to ~~sections~~ section 5126.11 ~~and 5126.15~~ of the 44611
Revised Code. 44612

(D) "Effective tax rate" for a county board means a fraction, 44613
the numerator of which is the county board's taxes and the 44614
denominator of which is the county board's taxable value. 44615

(E) "Local revenue factor" means a county board's taxes 44616
divided by the lesser of the aggregate rate of tax authorized to 44617
be levied by the board of county commissioners pursuant to 44618
division (L) of section 5705.19 and section 5705.222 of the 44619
Revised Code or the aggregate rate of tax authorized pursuant to 44620
that division and that section and certified to the county auditor 44621

under section 319.30 of the Revised Code. 44622

(F) "Hypothetical local revenue per enrollee" means the 44623
quotient obtained by dividing a county board's local revenue 44624
factor by its enrollment. 44625

(G) "Hypothetical statewide average revenue per enrollee" 44626
means the quotient obtained by dividing the sum of all county 44627
boards' local revenue factors by the total enrollment of all 44628
county boards. 44629

(H) "Infant and adult enrollment" means a county board of 44630
mental retardation and developmental disabilities' total average 44631
daily membership of programs and services as certified under 44632
divisions (B)(1)(a) and (c) of section 5126.12 of the Revised 44633
Code, exclusive of individuals who are served solely through ~~case~~ 44634
management service and support administration provided pursuant to 44635
section 5126.15 of the Revised Code or family support services 44636
provided pursuant to ~~sections~~ section 5126.11 ~~and 5126.15~~ of the 44637
Revised Code. 44638

Sec. 5126.18. (A) The department of mental retardation and 44639
developmental disabilities ~~may~~ shall pay to each county board of 44640
mental retardation and developmental disabilities whose 44641
hypothetical local revenue per enrollee is less than the 44642
hypothetical statewide average revenue per enrollee the amount 44643
computed under division (B) of this section. ~~If this section is~~ 44644
~~implemented in any year, payments~~ Payments shall be made on or 44645
before the thirtieth day of September. 44646

(B) Except as provided in division (C) of this section, the 44647
amount to be paid to a county board shall be equal to the 44648
following: 44649

(1) If the county board's effective tax rate is equal to or 44650
greater than one mill, the product obtained by multiplying the 44651

following two quantities: 44652

(a) The amount by which the hypothetical statewide average 44653
revenue per enrollee exceeds the county board's hypothetical local 44654
revenue per enrollee; 44655

(b) The county board's infant and adult enrollment. 44656

(2) If the county board's effective tax rate is less than one 44657
mill, the product obtained by multiplying the following three 44658
quantities: 44659

(a) The amount by which the hypothetical statewide average 44660
revenue per enrollee exceeds the county board's hypothetical local 44661
revenue per enrollee; 44662

(b) The county board's infant and adult enrollment; 44663

(c) The quotient obtained by dividing the county board's 44664
effective tax rate by one mill. 44665

(C)(1) For each individual who is enrolled in active 44666
treatment under the community alternative funding system as 44667
defined in section 5126.12 of the Revised Code, the department may 44668
reduce the portion of the payment made under this section for that 44669
individual by fifty per cent or less. 44670

(2) If, in any year, an appropriation by the general assembly 44671
to the department for purposes of this section is less than the 44672
total amount required to make, in full, the payments as determined 44673
under and authorized by this section, the department shall pay 44674
each county board the same percentage of the board's payment as 44675
determined under this section without regard to this division that 44676
the amount of the appropriation available for purposes of this 44677
section is of the total amount of payments as determined under 44678
this section without regard to this division. 44679

(3) Payments made to a county board pursuant to this section 44680
shall not exceed thirty per cent of the payments made to that 44681

board pursuant to section 5126.12 of the Revised Code. 44682

(D) Payments made under this section are supplemental to all 44683
other state or federal funds for which county boards are eligible 44684
and shall be made from funds appropriated for purposes of this 44685
section. ~~The A county board shall use the payments shall be used~~ 44686
~~solely for the development and implementation of early~~ 44687
~~intervention services for individuals included in the board's~~ 44688
~~infant enrollment and adult services for individuals included in~~ 44689
~~the board's adult enrollment to pay the nonfederal share of~~ 44690
medicaid expenditures that division (A) of section 5126.056 of the 44691
Revised Code requires the county board to pay. 44692

(E) Each county board that receives a payment under this 44693
section shall, for each year it receives a payment, certify to the 44694
department that it will make a good faith effort to obtain 44695
revenues, including federal funds, for services to individuals 44696
included in its infant and adult enrollment. 44697

Sec. 5126.19. (A) The director of mental retardation and 44698
developmental disabilities may grant temporary funding from the 44699
community mental retardation and developmental disabilities trust 44700
fund to a county board of mental retardation and developmental 44701
disabilities. With the consent of the county board, the director 44702
may distribute all or part of the funding directly to the persons 44703
who provide the services for which the funding is granted. 44704

(B) Funding granted under this section shall be granted 44705
according to the availability of moneys in the fund and priorities 44706
established by the director. Funding may be granted for any of the 44707
following purposes: 44708

(1) Behavioral or short-term interventions for persons with 44709
mental retardation or developmental disabilities that assist them 44710
in remaining in the community by preventing institutionalization; 44711

(2) Emergency respite care services, as defined in section 5126.11 of the Revised Code;	44712 44713
(3) Family support services provided under section 5126.11 of the Revised Code;	44714 44715
(4) Supported living, as defined in section 5126.01 of the Revised Code;	44716 44717
(5) Staff training for county board employees, employees of providers of residential services as defined in section 5126.01 of 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;	44718 44719 44720 44721 44722 44723
(6) Short-term provision of early childhood services provided under section 5126.05, adult services provided under sections 5126.05 and 5126.051, and case management services <u>service and support administration</u> 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;	44724 44725 44726 44727 44728 44729 44730
(7) Contracts with providers of residential services to maintain persons with mental retardation and developmental disabilities in their programs and avoid institutionalization.	44731 44732 44733
(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 to a county board in an amount equal to the same percentage of the	44734 44735 44736 44737 44738 44739 44740 44741 44742

total amount distributed for the services that the county board 44743
received in the immediately preceding state fiscal year. 44744

Sec. 5126.20. As used in this section and sections 5126.21 to 44745
5126.29 of the Revised Code: 44746

(A) "Service employee" means a person employed by a county 44747
board of mental retardation and developmental disabilities in a 44748
position which may require evidence of registration under section 44749
5126.25 of the Revised Code but for which a bachelor's degree from 44750
an accredited college or university is not required, and includes 44751
employees in the positions listed in division (C) of section 44752
5126.22 of the Revised Code. 44753

(B) "Professional employee" means a person employed by a 44754
board in a position for which either a bachelor's degree from an 44755
accredited college or university or a license or certificate 44756
issued under Title XLVII of the Revised Code is a minimum 44757
requirement, except in the case of a person employed as a 44758
conditional status service and support administrator for which an 44759
appropriate associate degree is the minimum requirement, and 44760
includes employees in the positions listed in division (B) of 44761
section 5126.22 of the Revised Code. 44762

(C) "Management employee" means a person employed by a board 44763
in a position having supervisory or managerial responsibilities 44764
and duties, and includes employees in the positions listed in 44765
division (A) of section 5126.22 of the Revised Code. 44766

(D) "Limited contract" means a contract of limited duration 44767
which is renewable at the discretion of the superintendent. 44768

(E) "Continuing contract" means a contract of employment that 44769
was issued prior to June 24, 1988, to a classified employee under 44770
which the employee has completed his the employee's probationary 44771
period and under which he the employee retains his employment 44772

until ~~he~~ the employee retires or resigns, is removed pursuant to 44773
section 5126.23 of the Revised Code, or is laid off. 44774

(F) "Supervisory responsibilities and duties" includes the 44775
authority to hire, transfer, suspend, lay off, recall, promote, 44776
discharge, assign, reward, or discipline other employees of the 44777
board; to responsibly direct them; to adjust their grievances; or 44778
to effectively recommend such action, if the exercise of that 44779
authority is not of a merely routine or clerical nature but 44780
requires the use of independent judgment. 44781

(G) "Managerial responsibilities and duties" includes 44782
formulating policy on behalf of the board, responsibly directing 44783
the implementation of policy, assisting in the preparation for the 44784
conduct of collective negotiations, administering collectively 44785
negotiated agreements, or having a major role in personnel 44786
administration. 44787

(H) "Investigative agent" means an individual who conducts 44788
investigations under section 5126.313 of the Revised Code. 44789

Sec. 5126.22. (A) Employees who hold the following positions 44790
in a county board of mental retardation and developmental 44791
disabilities are management employees: 44792

assistant superintendent 44793

director of business 44794

director of personnel 44795

adult services director 44796

workshop director 44797

habilitation manager 44798

director of residential services 44799

principal (director of children services) 44800

program or service supervisor	44801
plant manager	44802
production manager	44803
case management <u>service and support administration</u> supervisor	44804
<u>investigative agent</u>	44805
confidential employees as defined in section 4117.01 of the Revised Code	44806 44807
positions designated by the director of mental retardation and developmental disabilities as having managerial or supervisory responsibilities and duties	44808 44809 44810
positions designated by the county board in accordance with division (D) of this section.	44811 44812
(B) Employees who hold the following positions in a board are professional employees:	44813 44814
personnel certified pursuant to Chapter 3319. of the Revised Code	44815 44816
early intervention specialist	44817
physical development specialist	44818
habilitation specialist	44819
work adjustment specialist	44820
placement specialist	44821
vocational evaluator	44822
psychologist	44823
occupational therapist	44824
speech and language pathologist	44825
recreation specialist	44826
behavior management specialist	44827

physical therapist	44828
supportive home services specialist	44829
licensed practical nurse or registered nurse	44830
rehabilitation counselor	44831
doctor of medicine and surgery or of osteopathic medicine and surgery	44832 44833
dentist	44834
<u>case manager service and support administrator</u>	44835
<u>conditional status service and support administrator</u>	44836
social worker	44837
any position that is not a management position and for which	44838
the standards for certification established by the director of	44839
mental retardation and developmental disabilities under section	44840
5126.25 of the Revised Code require a bachelor's or higher degree	44841
professional positions designated by the director	44842
professional positions designated by the county board in	44843
accordance with division (D) of this section.	44844
(C) Employees who hold positions in a board that are neither	44845
management positions nor professional positions are service	44846
employees. Service employee positions include:	44847
workshop specialist	44848
workshop specialist assistant	44849
contract procurement specialist	44850
community employment specialist	44851
any assistant to a professional employee certified to	44852
provide, or supervise the provision of, adult services or case	44853
management <u>service and support administration</u>	44854

service positions designated by the director 44855

service positions designated by a county board in accordance 44856
with division (D) of this section. 44857

(D) A county board may designate a position only if the 44858
position does not include directly providing, or supervising 44859
employees who directly provide, service or instruction to 44860
individuals with mental retardation or developmental disabilities. 44861

(E) If a county board desires to have a position established 44862
that is not specifically listed in this section that includes 44863
directly providing, or supervising employees who directly provide, 44864
services or instruction to individuals with mental retardation or 44865
developmental disabilities, the board shall submit to the director 44866
a written description of the position and request that the 44867
director designate the position as a management, professional, or 44868
service position under this section. The director shall consider 44869
each request submitted under this division and respond within 44870
thirty days. If the director approves the request, he the director 44871
shall designate the position as a management, professional, or 44872
service position. 44873

(F) A county board shall not terminate its employment of any 44874
management, professional, or service employee solely because a 44875
position is added to or eliminated from those positions listed in 44876
this section or because a position is designated or no longer 44877
designated by the director or a county board. 44878

Sec. 5126.221. Each county board of mental retardation and 44879
developmental disabilities shall employ at least one investigative 44880
agent or contract with a person or government entity, including 44881
another county board of mental retardation and developmental 44882
disabilities or a regional council established under section 44883
5126.13 of the Revised Code, for the services of an investigative 44884
agent. Neither a county board nor a person or government entity 44885

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.

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All investigative agents shall be trained in civil and
criminal investigatory practices and report directly to a county
board's superintendent. 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.

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Sec. 5126.25. (A) The director of mental retardation and
developmental disabilities shall adopt rules in accordance with
Chapter 119. of the Revised Code establishing uniform standards
and procedures for the certification of persons for employment by
county boards of mental retardation and developmental disabilities
as superintendents, management employees, and professional
employees and uniform standards and procedures for the
registration of persons for employment by county boards as
registered service employees. As part of the rules, the director
may establish continuing education and professional training
requirements for renewal of certificates and evidence of
registration and shall establish such requirements for renewal of
an investigative agent certificate. In the rules, the director
shall establish certification standards for employment in the
position of investigative agent that require an individual to have
or obtain no less than an associate degree from an accredited
college or university or have or obtain comparable experience or
training. The director shall not adopt rules that require any
service employee to have or obtain a bachelor's or higher degree.

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The director shall adopt the rules in a manner that provides
for the issuance of certificates and evidence of registration

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according to categories, levels, and grades. The rules shall
describe each category, level, and grade.

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The rules adopted under this division shall apply to persons
employed or seeking employment in a position that includes
directly providing, or supervising persons who directly provide,
services or instruction to or on behalf of individuals with mental
retardation or developmental disabilities, except that the rules
shall not apply to persons who hold a valid license issued under
Chapter 3319. of the Revised Code and perform no duties other than
teaching or supervision of a teaching program or persons who hold
a valid license or certificate issued under Title XLVII of the
Revised Code and perform only those duties governed by the license
or certificate. The rules shall specify the positions that require
certification or registration. The rules shall specify that the
position of investigative agent requires certification.

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(B) The director shall adopt rules in accordance with Chapter
119. of the Revised Code establishing standards for approval of
courses of study to prepare persons to meet certification
requirements. The director shall approve courses of study meeting
the standards and provide for the inspection of the courses to
ensure the maintenance of satisfactory training procedures. The
director shall approve courses of study only if given by a state
university or college as defined in section 3345.32 of the Revised
Code, a state university or college of another state, or an
institution that has received a certificate of authorization to
confer degrees from the board of regents pursuant to Chapter 1713.
of the Revised Code or from a comparable agency of another state.

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(C) Each applicant for a certificate for employment or
evidence of registration for employment by a county board shall
apply to the department of mental retardation and developmental
disabilities on forms that the director of the department shall

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prescribe and provide. The application shall be accompanied by the 44949
application fee established in rules adopted under this section. 44950
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(D) The director shall issue a certificate for employment to 44952
each applicant who meets the standards for certification 44953
established under this section and shall issue evidence of 44954
registration for employment to each applicant who meets the 44955
standards for registration established under this section. Each 44956
certificate or evidence of registration shall state the category, 44957
level, and grade for which it is issued. 44958

The director shall issue, renew, deny, suspend, or revoke 44959
certificates and evidence of registration in accordance with rules 44960
adopted under this section. The director shall deny, suspend, or 44961
revoke a certificate or evidence of registration if the director 44962
finds, pursuant to an adjudication conducted in accordance with 44963
Chapter 119. of the Revised Code, that the applicant for or holder 44964
of the certificate or evidence of registration is guilty of 44965
intemperate, immoral, or other conduct unbecoming to the 44966
applicant's or holder's position, or is guilty of incompetence or 44967
negligence within the scope of the applicant's or holder's duties. 44968
The director shall deny or revoke a certificate or evidence of 44969
registration if the director finds, pursuant to an adjudication 44970
conducted in accordance with Chapter 119. of the Revised Code, 44971
that the applicant for or holder of the certificate or evidence of 44972
registration has been convicted of or pleaded guilty to any of the 44973
offenses described in division (E) of section 5126.28 of the 44974
Revised Code, unless the individual meets standards for 44975
rehabilitation that the director establishes in the rules adopted 44976
under that section. Evidence supporting such allegations shall be 44977
presented to the director in writing and the director shall 44978
provide prompt notice of the allegations to the person who is the 44979
subject of the allegations. A denial, suspension, or revocation 44980

may be appealed in accordance with procedures the director shall 44981
establish in the rules adopted under this section. 44982

(E)(1) A person holding a valid certificate under this 44983
section on the effective date of any rules adopted under this 44984
section that increase certification standards shall have such 44985
period as the rules prescribe, but not less than one year after 44986
the effective date of the rules, to meet the new certification 44987
standards. 44988

A person who is registered under this section on the 44989
effective date of any rule that changes the standards adopted 44990
under this section shall have such period as the rules prescribe, 44991
but not less than one year, to meet the new registration 44992
standards. 44993

(2) If an applicant for a certificate for employment has not 44994
completed the courses of instruction necessary to meet the 44995
department's standards for certification, the department shall 44996
inform the applicant of the courses the applicant must 44997
successfully complete to meet the standards and shall specify the 44998
time within which the applicant must complete the courses. The 44999
department shall grant the applicant at least one year to complete 45000
the courses and shall not require the applicant to complete more 45001
than four courses in any one year. The applicant is not subject to 45002
any changes regarding the courses required for certification that 45003
are made after the department informs the applicant of the courses 45004
the applicant must complete, unless the applicant does not 45005
successfully complete the courses within the time specified by the 45006
department. 45007

(F) A person who holds a certificate or evidence of 45008
registration, other than one designated as temporary, is qualified 45009
to be employed according to that certificate or evidence of 45010
registration by any county board. 45011

(G) The director shall monitor county boards to ensure that 45012
their employees who must be certified or registered are 45013
appropriately certified or registered and performing those 45014
functions they are authorized to perform under their certificate 45015
or evidence of registration. 45016

(H) A county board superintendent or the superintendent's 45017
designee may certify to the director that county board employees 45018
who are required to meet continuing education or professional 45019
training requirements as a condition of renewal of certificates or 45020
evidence of registration have met the requirements. The 45021
superintendent or the superintendent's designee shall maintain in 45022
appropriate personnel files evidence acceptable to the director 45023
that the employees have met the requirements and permit 45024
representatives of the department access to the evidence on 45025
request. 45026

(I) All fees collected pursuant to this section shall be 45027
deposited in the state treasury to the credit of the employee 45028
certification and registration fund, which is hereby created. 45029
Money credited to the fund shall be used solely for the operation 45030
of the certification and registration program established under 45031
this section and for providing continuing training to county board 45032
employees. 45033

(J) Employees of entities that contract with county boards of 45034
mental retardation and developmental disabilities to operate 45035
programs and services for individuals with mental retardation and 45036
developmental disabilities are subject to the certification and 45037
registration requirements established under section 5123.082 of 45038
the Revised Code. 45039

Sec. 5126.31. (A) A county board of mental retardation and 45040
developmental disabilities shall review reports of abuse and 45041
neglect made under section 5123.61 of the Revised Code and reports 45042

referred to it under section 5101.611 of the Revised Code to 45043
determine whether the person who is the subject of the report is 45044
an adult with mental retardation or a developmental disability in 45045
need of services to deal with the abuse or neglect. The board 45046
shall give notice of each report to the registry office of the 45047
department of mental retardation and developmental disabilities 45048
established pursuant to section 5123.61 of the Revised Code on the 45049
first working day after receipt of the report. If the report 45050
alleges that there is a substantial risk to the adult of immediate 45051
physical harm or death, the board shall initiate review within 45052
twenty-four hours of its receipt of the report. If the board 45053
determines that the person is sixty years of age or older but does 45054
not have mental retardation or a developmental disability, it 45055
shall refer the case to the county department of job and family 45056
services. If the board determines that the person is an adult with 45057
mental retardation or a developmental disability, it shall 45058
continue its review of the case. 45059

(B) For each review over which the board retains 45060
responsibility under division (A) of this section, it shall do all 45061
of the following: 45062

(1) Give both written and oral notice of the purpose of the 45063
review to the adult and, if any, to the adult's legal counsel or 45064
caretaker, in simple and clear language; 45065

(2) Visit the adult, in the adult's residence if possible, 45066
and explain the notice given under division (B)(1) of this 45067
section; 45068

(3) Request from the registry office any prior reports 45069
concerning the adult or other principals in the case; 45070

(4) Consult, if feasible, with the person who made the report 45071
under section 5101.61 or 5123.61 of the Revised Code and with any 45072
agencies or persons who have information about the alleged abuse 45073
or neglect; 45074

(5) Cooperate fully with the law enforcement agency 45075
responsible for investigating the report and for filing any 45076
resulting criminal charges and, on request, turn over evidence to 45077
the agency; 45078

(6) Determine whether the adult needs services, and prepare a 45079
written report stating reasons for the determination. No adult 45080
shall be determined to be abused, neglected, or in need of 45081
services for the sole reason that, in lieu of medical treatment, 45082
the adult relies on or is being furnished spiritual treatment 45083
through prayer alone in accordance with the tenets and practices 45084
of a church or religious denomination of which the adult is a 45085
member or adherent. 45086

(C) The board shall arrange for the provision of services for 45087
the prevention, correction or discontinuance of abuse or neglect 45088
or of a condition resulting from abuse or neglect for any adult 45089
who has been determined to need the services and consents to 45090
receive them. These services may include, but are not limited to, 45091
~~case management~~ service and support administration, fiscal 45092
management, medical, mental health, home health care, homemaker, 45093
legal, and residential services and the provision of temporary 45094
accommodations and necessities such as food and clothing. The 45095
services do not include acting as a guardian, trustee, or 45096
protector as defined in section 5123.55 of the Revised Code. If 45097
the provision of residential services would require expenditures 45098
by the department of mental retardation and developmental 45099
disabilities, the board shall obtain the approval of the 45100
department prior to arranging the residential services. 45101

To arrange services, the board shall: 45102

(1) Develop an individualized service plan identifying the 45103
types of services required for the adult, the goals for the 45104
services, and the persons or agencies that will provide them; 45105

(2) In accordance with rules established by the director of 45106
mental retardation and developmental disabilities, obtain the 45107
consent of the adult or the adult's guardian to the provision of 45108
any of these services and obtain the signature of the adult or 45109
guardian on the individual service plan. An adult who has been 45110
found incompetent under Chapter 2111. of the Revised Code may 45111
consent to services. If the board is unable to obtain consent, it 45112
may seek, if the adult is incapacitated, a court order pursuant to 45113
section 5126.33 of the Revised Code authorizing the board to 45114
arrange these services. 45115

(D) The board shall ensure that the adult receives the 45116
services arranged by the board from the provider and shall have 45117
the services terminated if the adult withdraws consent. 45118

(E) On completion of a review, the board shall submit a 45119
written report to the registry office established under section 45120
5123.61 of the Revised Code. If the report includes a finding that 45121
a person with mental retardation or a developmental disability is 45122
a victim of action or inaction that may constitute a crime under 45123
federal law or the law of this state, the board shall submit the 45124
report to the law enforcement agency responsible for investigating 45125
the report. Reports prepared under this section are not public 45126
records as defined in section 149.43 of the Revised Code. 45127
45128

(F) The board shall provide comprehensive formal training for 45129
employees and other persons authorized to implement the 45130
requirements of this section. 45131

Sec. 5126.311. (A) Notwithstanding the requirement of section 45132
5126.31 of the Revised Code that a county board of mental 45133
retardation and developmental disabilities review reports of abuse 45134
and neglect, ~~if the department of mental retardation and~~ 45135
~~developmental disabilities or a county board of mental retardation~~ 45136

~~and developmental disabilities determines that it would be~~ 45137
~~inappropriate for the county board to investigate a report of~~ 45138
~~abuse or neglect made under section 5123.61 of the Revised Code,~~ 45139
~~at the request of the department or county board,~~ one of the 45140
following government entities may, at the request of the county 45141
board or the department of mental retardation and developmental 45142
disabilities, shall review the report instead of the county board 45143
if circumstances specified in rules adopted under division (B) of 45144
this section exist: 45145

~~(A)(1)~~ Another county board of mental retardation and 45146
developmental disabilities; 45147

~~(B)(2)~~ The department; 45148

~~(C)(3)~~ A regional council of government established pursuant 45149
to Chapter 167. of the Revised Code; 45150

~~(D)(4)~~ Any other government entity authorized to investigate 45151
reports of abuse and neglect. 45152

(B) The director of mental retardation and developmental 45153
disabilities shall adopt rules in accordance with Chapter 119. of 45154
the Revised Code specifying circumstances under which it is 45155
inappropriate for a county board to review reports of abuse and 45156
neglect. 45157

Sec. 5126.313. (A) After reviewing a report of abuse or 45158
neglect under section 5126.31 of the Revised Code or a report of a 45159
major unusual incident made in accordance with rules adopted under 45160
section 5123.612 of the Revised Code, a county board of mental 45161
retardation and developmental disabilities shall conduct an 45162
investigation if circumstances specified in rules adopted under 45163
division (B) of this section exist. If the circumstances specified 45164
in the rules exist, the county board shall conduct the 45165
investigation in the manner specified by the rules. 45166

(B) The director of mental retardation and developmental disabilities shall adopt rules in accordance with Chapter 119. of the Revised Code specifying circumstances under which a county board shall conduct investigations under division (A) of this section and the manner in which the county board shall conduct the investigation.

Sec. 5126.32. If during the course of the review conducted under section 5126.31 of the Revised Code or the investigation conducted under section 5126.313 of the Revised Code, any person denies or obstructs the board's access to the residence of the adult who is the subject of ~~a report of abuse or neglect~~ the review or investigation, the board may file a petition with the probate court of the county in which the residence is located for a temporary restraining order, in accordance with Civil Rule 65, to prevent the denial or obstruction of access. If the court finds reasonable cause to believe that the adult is abused or neglected and that access to ~~his~~ the adult's residence has been denied or obstructed, the court shall issue a temporary order restraining the interference or obstruction. After the order has been obtained, at the request of the board, an officer of the law enforcement agency investigating the report shall accompany representatives of the board to the adult's residence.

If a person refuses to allow or interferes with the provision of services described in division (C) of section 5126.31 of the Revised Code to an adult who has consented to them, the county board may file a petition with the probate court of the county in which the adult resides for appropriate injunctive relief in accordance with Civil Rule 65.

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 45197
services as a county board client, including any client who 45198
receives residential services funded through ~~the medical~~ 45199
~~assistance program's~~ home and or community-based services ~~waivers~~ 45200
~~administered by the department of mental retardation and~~ 45201
~~developmental disabilities~~, family support services provided under 45202
section 5126.11 of the Revised Code, or supported living provided 45203
in accordance with sections 5126.41 to 5126.47 of the Revised 45204
Code. "In-home care" includes care that is provided outside a 45205
client's home in places incidental to the home, and while 45206
traveling to places incidental to the home, except that "in-home 45207
care" does not include care provided in the facilities of a county 45208
board of mental retardation and developmental disabilities or care 45209
provided in schools. 45210

(2) "Parent" means either parent of a child, including an 45211
adoptive parent but not a foster parent. 45212

(3) "Unlicensed in-home care worker" means an individual who 45213
provides in-home care but is not a health care professional. A 45214
county board worker may be an unlicensed in-home care worker. 45215

(4) "Family member" means a parent, sibling, spouse, son, 45216
daughter, grandparent, aunt, uncle, cousin, or guardian of the 45217
individual with mental retardation or a developmental disability 45218
if the individual with mental retardation or developmental 45219
disabilities lives with the person and is dependent on the person 45220
to the extent that, if the supports were withdrawn, another living 45221
arrangement would have to be found. 45222

(B) Except as provided in division (D) of this section, a 45223
family member of an individual with mental retardation or a 45224
developmental disability may authorize an unlicensed in-home care 45225
worker to give or apply prescribed medication or perform other 45226
health care tasks as part of the in-home care provided to the 45227
individual, if the family member is the primary supervisor of the 45228

care and the unlicensed in-home care worker has been selected by 45229
the family member and is under the direct supervision of the 45230
family member. Sections 4723.62 and 5126.351 to 5126.356 of the 45231
Revised Code do not apply to the in-home care authorized by a 45232
family member under this section. Instead, a family member shall 45233
obtain a prescription, if applicable, and written instructions 45234
from a health care professional for the care to be provided to the 45235
individual. The family member shall authorize the unlicensed 45236
in-home care worker to provide the care by preparing a written 45237
document granting the authority. The family member shall provide 45238
the unlicensed in-home care worker with appropriate training and 45239
written instructions in accordance with the instructions obtained 45240
from the health care professional. 45241

(C) A family member who authorizes an unlicensed in-home care 45242
worker to give or apply prescribed medication or perform other 45243
health care tasks retains full responsibility for the health and 45244
safety of the individual receiving the care and for ensuring that 45245
the worker provides the care appropriately and safely. No entity 45246
that funds or monitors the provision of in-home care may be held 45247
liable for the results of the care provided under this section by 45248
an unlicensed in-home care worker, including such entities as the 45249
county board of mental retardation and developmental disabilities, 45250
any other entity that employs an unlicensed in-home care worker, 45251
and the department of mental retardation and developmental 45252
disabilities. 45253

An unlicensed in-home care worker who is authorized under 45254
this section by a family member to provide care to an individual 45255
may not be held liable for any injury caused in providing the 45256
care, unless the worker provides the care in a manner that is not 45257
in accordance with the training and instructions received or the 45258
worker acts in a manner that constitutes wanton or reckless 45259
misconduct. 45260

(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. 5126.431. (A) Pursuant to Chapter 119. of the Revised Code, the department of mental retardation and developmental disabilities shall adopt rules establishing standards and procedures for certification of persons ~~and government entities~~ that provide or propose to provide, under contract with ~~the department until July 1, 1995, or with~~ a county board of mental retardation and developmental disabilities, supported living for individuals with mental retardation or developmental disabilities. The rules shall allow a person to automatically satisfy a standard for certification under this section if the person holds a current, valid license under section 5123.19 of the Revised Code to operate a residential facility and had to satisfy the standard to obtain the residential facility license.

(B) Pursuant to Chapter 119. of the Revised Code, the department shall adopt rules establishing quality assurance standards for supported living provided to individuals by providers certified under this section.

(C) The rules adopted under this section shall include the following:	45292 45293
(1) Procedures for ensuring that providers comply with section 5126.281 of the Revised Code;	45294 45295
(2) Methods of evaluating the services provided and protecting the due process rights of any individual or entity affected by an evaluation or decision made pursuant to this section;	45296 45297 45298 45299
(3) Procedures for revoking certification.	45300
(D)(1) Providers shall be evaluated to ensure that services are provided in a quality manner advantageous to the individual receiving the services. When evaluations are conducted, the following shall be considered:	45301 45302 45303 45304
(a) The provider's experience and financial responsibility;	45305
(b) The ability to comply with program standards for supported living;	45306 45307
(c) The ability to meet the needs of the individuals served;	45308
(d) The ability to work cooperatively with the department, county boards, and other providers;	45309 45310
(e) Any other factor considered relevant.	45311
(2) The records of evaluations conducted under this section are public records for purposes of section 149.43 of the Revised Code and shall be made available on request of any person, including individuals being served, individuals seeking supported living, and county boards.	45312 45313 45314 45315 45316
(E) The department shall certify providers in accordance with the rules adopted under this section. The department may revoke a provider's certification <u>in accordance with Chapter 119. of the Revised Code</u> for good cause, including misfeasance, malfeasance,	45317 45318 45319 45320

nonfeasance, confirmed abuse or neglect, financial 45321
irresponsibility, or other conduct the department determines is 45322
injurious to individuals being served. 45323

Sec. 5139.01. (A) As used in this chapter: 45324

(1) "Commitment" means the transfer of the physical custody 45325
of a child or youth from the court to the department of youth 45326
services. 45327

(2) "Permanent commitment" means a commitment that vests 45328
legal custody of a child in the department of youth services. 45329

(3) "Legal custody," insofar as it pertains to the status 45330
that is created when a child is permanently committed to the 45331
department of youth services, means a legal status in which the 45332
department has the following rights and responsibilities: the 45333
right to have physical possession of the child; the right and duty 45334
to train, protect, and control the child; the responsibility to 45335
provide the child with food, clothing, shelter, education, and 45336
medical care; and the right to determine where and with whom the 45337
child shall live, subject to the minimum periods of, or periods 45338
of, institutional care prescribed in section 2151.355 of the 45339
Revised Code; provided, that these rights and responsibilities are 45340
exercised subject to the powers, rights, duties, and 45341
responsibilities of the guardian of the person of the child, and 45342
subject to any residual parental rights and responsibilities. 45343

(4) Unless the context requires a different meaning, 45344
"institution" means a state facility that is created by the 45345
general assembly and that is under the management and control of 45346
the department of youth services or a private entity with which 45347
the department has contracted for the institutional care and 45348
custody of felony delinquents. 45349

(5) "Full-time care" means care for twenty-four hours a day 45350
for over a period of at least two consecutive weeks. 45351

(6) "Placement" means the conditional release of a child 45352
under the terms and conditions that are specified by the 45353
department of youth services. The department shall retain legal 45354
custody of a child released pursuant to division (C) of section 45355
2151.38 of the Revised Code or division (C) of section 5139.06 of 45356
the Revised Code until the time that it discharges the child or 45357
until the legal custody is terminated as otherwise provided by 45358
law. 45359

(7) "Home placement" means the placement of a child in the 45360
home of the child's parent or parents or in the home of the 45361
guardian of the child's person. 45362

(8) "Discharge" means that the department of youth services' 45363
legal custody of a child is terminated. 45364

(9) "Release" means the termination of a child's stay in an 45365
institution and the subsequent period during which the child 45366
returns to the community under the terms and conditions of 45367
supervised release. 45368

(10) "Delinquent child" has the same meaning as in section 45369
2151.02 of the Revised Code. 45370

(11) "Felony delinquent" means any child who is at least 45371
twelve years of age but less than eighteen years of age and who is 45372
adjudicated a delinquent child for having committed an act that if 45373
committed by an adult would be a felony. "Felony delinquent" 45374
includes any adult who is between the ages of eighteen and 45375
twenty-one and who is in the legal custody of the department of 45376
youth services for having committed an act that if committed by an 45377
adult would be a felony. 45378

(12) "Juvenile traffic offender" has the same meaning as in 45379
section 2151.021 of the Revised Code. 45380

(13) "Public safety beds" means all of the following: 45381

(a) Felony delinquents who have been committed to the 45382
department of youth services for the commission of an act, other 45383
than a violation of section 2911.01 or 2911.11 of the Revised 45384
Code, that is a category one offense or a category two offense and 45385
who are in the care and custody of an institution or have been 45386
diverted from care and custody in an institution and placed in a 45387
community corrections facility; 45388

(b) Felony delinquents who, while committed to the department 45389
of youth services and in the care and custody of an institution or 45390
a community corrections facility, are adjudicated delinquent 45391
children for having committed in that institution or community 45392
corrections facility an act that if committed by an adult would be 45393
a felony; 45394

(c) Children who satisfy all of the following: 45395

(i) They are at least twelve years of age but less than 45396
eighteen years of age. 45397

(ii) They are adjudicated delinquent children for having 45398
committed acts that if committed by an adult would be a felony. 45399

(iii) They are committed to the department of youth services 45400
by the juvenile court of a county that has had one-tenth of one 45401
per cent or less of the statewide adjudications for felony 45402
delinquents as averaged for the past four fiscal years. 45403

(iv) They are in the care and custody of an institution or a 45404
community corrections facility. 45405

(d) Felony delinquents who, while committed to the department 45406
of youth services and in the care and custody of an institution, 45407
commit in that institution an act that if committed by an adult 45408
would be a felony, who are serving disciplinary time for having 45409
committed that act, and who have been institutionalized or 45410
institutionalized in a secure facility for the minimum period of 45411
time specified in division (A)(4) or (5) of section 2151.355 of 45412

the Revised Code. 45413

(e) Felony delinquents who are subject to and serving a 45414
three-year period of commitment order imposed by a juvenile court 45415
pursuant to division (A)(7) of section 2151.355 of the Revised 45416
Code for an act, other than a violation of section 2911.11 of the 45417
Revised Code, that would be a category one offense or category two 45418
offense if committed by an adult. 45419

(f) Felony delinquents who are described in divisions 45420
(A)(13)(a) to (e) of this section, who have been granted a 45421
judicial release under division (B) of section 2151.38 of the 45422
Revised Code or an early release under division (C) of that 45423
section from the commitment to the department of youth services 45424
for the act described in divisions (A)(13)(a) to (e) of this 45425
section, who have violated the terms and conditions of that 45426
judicial release or early release, and who, pursuant to an order 45427
of the court of the county in which the particular felony 45428
delinquent was placed on release that is issued pursuant to 45429
division (D) of section 2151.38 of the Revised Code, have been 45430
returned to the department for institutionalization or 45431
institutionalization in a secure facility. 45432

(g) Felony delinquents who have been committed to the custody 45433
of the department of youth services, who have been granted 45434
supervised release from the commitment pursuant to section 5139.51 45435
of the Revised Code, who have violated the terms and conditions of 45436
that supervised release, and who, pursuant to an order of the 45437
court of the county in which the particular child was placed on 45438
supervised release issued pursuant to division (F) of section 45439
5139.52 of the Revised Code, have had the supervised release 45440
revoked and have been returned to the department for 45441
institutionalization. A felony delinquent described in this 45442
division shall be a public safety bed only for the time during 45443
which the felony delinquent is institutionalized as a result of 45444

the revocation subsequent to the initial thirty-day period of 45445
institutionalization required by division (F) of section 5139.52 45446
of the Revised Code. 45447

(14) "State target youth" means twenty-five per cent of the 45448
projected total number of felony delinquents for each year of a 45449
biennium, factoring in revocations and recommitments. 45450

(15) Unless the context requires a different meaning, 45451
"community corrections facility" means a county or multicounty 45452
rehabilitation center for felony delinquents who have been 45453
committed to the department of youth services and diverted from 45454
care and custody in an institution and placed in the 45455
rehabilitation center pursuant to division (E) of section 5139.36 45456
of the Revised Code. 45457

(16) "Secure facility" means any facility that is designed 45458
and operated to ensure that all of its entrances and exits are 45459
under the exclusive control of its staff and to ensure that, 45460
because of that exclusive control, no child who has been 45461
institutionalized in the facility may leave the facility without 45462
permission or supervision. 45463

(17) "Community residential program" means a program that 45464
satisfies both of the following: 45465

(a) It is housed in a building or other structure that has no 45466
associated major restraining construction, including, but not 45467
limited to, a security fence. 45468

(b) It provides twenty-four-hour care, supervision, and 45469
programs for felony delinquents who are in residence. 45470

(18) "Category one offense" and "category two offense" have 45471
the same meanings as in section 2151.26 of the Revised Code. 45472

(19) "Disciplinary time" means additional time that the 45473
department of youth services requires a felony delinquent to serve 45474

in an institution, that delays the felony delinquent's planned 45475
release, and that the department imposes upon the felony 45476
delinquent following the conduct of an internal due process 45477
hearing for having committed any of the following acts while 45478
committed to the department and in the care and custody of an 45479
institution: 45480

(a) An act that if committed by an adult would be a felony; 45481

(b) An act that if committed by an adult would be a 45482
misdemeanor; 45483

(c) An act that is not described in division (A)(19)(a) or 45484
(b) of this section and that violates an institutional rule of 45485
conduct of the department. 45486

(20) "Unruly child" has the same meaning as in section 45487
2151.022 of the Revised Code. 45488

(21) "Revocation" means the act of revoking a child's 45489
supervised release for a violation of a term or condition of the 45490
child's supervised release in accordance with section 5139.52 of 45491
the Revised Code. 45492

(22) "Release authority" means the release authority of the 45493
department of youth services that is established by section 45494
5139.50 of the Revised Code. 45495

(23) "Supervised release" means the event of the release of a 45496
child under this chapter from an institution and the period after 45497
that release during which the child is supervised and assisted by 45498
an employee of the department of youth services under specific 45499
terms and conditions for reintegration of the child into the 45500
community. 45501

(24) "Victim" means the person identified in a police report, 45502
complaint, or information as the victim of an act that would have 45503
been a criminal offense if committed by an adult and that provided 45504

the basis for adjudication proceedings resulting in a child's 45505
commitment to the legal custody of the department of youth 45506
services. 45507

(25) "Victim's representative" means a member of the victim's 45508
family or another person whom the victim or another authorized 45509
person designates in writing, pursuant to section 5139.56 of the 45510
Revised Code, to represent the victim with respect to proceedings 45511
of the release authority of the department of youth services and 45512
with respect to other matters specified in that section. 45513

(26) "Member of the victim's family" means a spouse, child, 45514
stepchild, sibling, parent, stepparent, grandparent, other 45515
relative, or legal guardian of a child but does not include a 45516
person charged with, convicted of, or adjudicated a delinquent 45517
child for committing a criminal or delinquent act against the 45518
victim or another criminal or delinquent act arising out of the 45519
same conduct, criminal or delinquent episode, or plan as the 45520
criminal or delinquent act committed against the victim. 45521

(27) "Judicial release" means a release of a child from 45522
institutional care or institutional care in a secure facility that 45523
is granted by a court pursuant to division (B) of section 2151.38 45524
of the Revised Code during the period specified in that division. 45525

(28) "Early release" means a release of a child from 45526
institutional care or institutional care in a secure facility that 45527
is granted by a court pursuant to division (C) of section 2151.38 45528
of the Revised Code during the period specified in that division. 45529

(29) "Juvenile justice system" includes all of the functions 45530
of the juvenile courts, the department of youth services, any 45531
public or private agency whose purposes include the prevention of 45532
delinquency or the diversion, adjudication, detention, or 45533
rehabilitation of delinquent children, and any of the functions of 45534
the criminal justice system that are applicable to children. 45535

(30) "Metropolitan county criminal justice services agency" means an agency that is established pursuant to division (A) of section 181.54 of the Revised Code. 45536
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(31) "Administrative planning district" means a district that is established pursuant to division (A) or (B) of section 181.56 of the Revised Code. 45539
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(32) "Criminal justice coordinating council" means a criminal justice services agency that is established pursuant to division (D) of section 181.56 of the Revised Code. 45542
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(33) "Comprehensive plan" means a document that coordinates, evaluates, and otherwise assists, on an annual or multi-year basis, all of the functions of the juvenile justice systems of the state or a specified area of the state, that conforms to the priorities of the state with respect to juvenile justice systems, and that conforms with the requirements of all federal criminal justice acts. These functions include, but are not limited to, all of the following: 45545
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(a) Delinquency prevention; 45553

(b) Identification, detection, apprehension, and detention of persons charged with delinquent acts; 45554
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(c) Assistance to crime victims or witnesses, except that the comprehensive plan does not include the functions of the attorney general pursuant to sections 109.91 and 109.92 of the Revised Code; 45556
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45559

(d) Adjudication or diversion of persons charged with delinquent acts; 45560
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(e) Custodial treatment of delinquent children; 45562

(f) Institutional and noninstitutional rehabilitation of delinquent children. 45563
45564

(B) There is hereby created the department of youth services. 45565

The governor shall appoint the director of the department with the
advice and consent of the senate. The director shall hold office
during the term of the appointing governor but subject to removal
at the pleasure of the governor. Except as otherwise authorized in
section 108.05 of the Revised Code, the director shall devote the
director's entire time to the duties of the director's office and
shall hold no other office or position of trust or profit during
the director's term of office.

The director is the chief executive and administrative
officer of the department and has all the powers of a department
head set forth in Chapter 121. of the Revised Code. The director
may adopt rules for the government of the department, the conduct
of its officers and employees, the performance of its business,
and the custody, use, and preservation of the department's
records, papers, books, documents, and property. The director
shall be an appointing authority within the meaning of Chapter
124. of the Revised Code. Whenever this or any other chapter or
section of the Revised Code imposes a duty on or requires an
action of the department, the duty or action shall be performed by
the director or, upon the director's order, in the name of the
department.

Sec. 5139.11. The department of youth services shall do all
of the following:

(A) Through a program of education, promotion, and
organization, form groups of local citizens and assist these
groups in conducting activities aimed at the prevention and
control of juvenile delinquency, making use of local people and
resources for the following purposes:

(1) Combatting local conditions known to contribute to
juvenile delinquency;

(2) Developing recreational and other programs for youth

work;	45597
(3) Providing adult sponsors for delinquent children cases;	45598
(4) Dealing with other related problems of the locality;	45599
(B) Advise local, state, and federal officials, public and private agencies, and lay groups on the needs for and possible methods of the reduction and prevention of juvenile delinquency and the treatment of delinquent children;	45600 45601 45602 45603
(C) Consult with the schools and courts of this state on the development of programs for the reduction and prevention of delinquency and the treatment of delinquents;	45604 45605 45606
(D) Cooperate with other agencies whose services deal with the care and treatment of delinquent children to the end that delinquent children who are state wards may be assisted whenever possible to a successful adjustment outside of institutional care;	45607 45608 45609 45610
(E) Cooperate with other agencies in surveying, developing, and utilizing the recreational resources of a community as a means of combatting the problem of juvenile delinquency and effectuating rehabilitation;	45611 45612 45613 45614
(F) Hold district and state conferences from time to time in order to acquaint the public with current problems of juvenile delinquency and develop a sense of civic responsibility toward the prevention of juvenile delinquency;	45615 45616 45617 45618
(G) Assemble and distribute information relating to juvenile delinquency and report on studies relating to community conditions that affect the problem of juvenile delinquency;	45619 45620 45621
(H) Assist any community within the state by conducting a comprehensive survey of the community's available public and private resources, and recommend methods of establishing a community program for combatting juvenile delinquency and crime, but no survey of that type shall be conducted unless local	45622 45623 45624 45625 45626

individuals and groups request it through their local authorities, 45627
and no request of that type shall be interpreted as binding the 45628
community to following the recommendations made as a result of the 45629
request; 45630

(I) Evaluate the rehabilitation of children committed to the 45631
department and prepare and submit periodic reports to the 45632
committing court for the following purposes: 45633

(1) Evaluating the effectiveness of institutional treatment; 45634

(2) Making recommendations for early release where 45635
appropriate and recommending terms and conditions for release; 45636

(3) Reviewing the placement of children and recommending 45637
alternative placements where appropriate. 45638

(J) Coordinate dates for hearings to be conducted under 45639
section 2151.38 of the Revised Code and assist in the transfer and 45640
release of children from institutionalization to the custody of 45641
the committing court; 45642

(K)(1) Coordinate and assist juvenile justice systems by 45643
doing the following: 45644

(a) Performing juvenile justice system planning in the state, 45645
including any planning that is required by any federal law; 45646

(b) Collecting, analyzing, and correlating information and 45647
data concerning the juvenile justice system in the state; 45648

(c) Cooperating with and providing technical assistance to 45649
state departments, administrative planning districts, metropolitan 45650
county criminal justice services agencies, criminal justice 45651
coordinating councils, and agencies, offices, and departments of 45652
the juvenile justice system in the state, and other appropriate 45653
organizations and persons; 45654

(d) Encouraging and assisting agencies, offices, and 45655
departments of the juvenile justice system in the state and other 45656

appropriate organizations and persons to solve problems that 45657
relate to the duties of the department; 45658

(e) Administering within the state any juvenile justice acts 45659
and programs that the governor requires the department to 45660
administer; 45661

(f) Implementing the state comprehensive plans; 45662

(g) Auditing grant activities of agencies, offices, 45663
organizations, and persons that are financed in whole or in part 45664
by funds granted through the department; 45665

(h) Monitoring or evaluating the performance of juvenile 45666
justice system projects and programs in the state that are 45667
financed in whole or in part by funds granted through the 45668
department; 45669

(i) Applying for, allocating, disbursing, and accounting for 45670
grants that are made available pursuant to federal juvenile 45671
justice acts, or made available from other federal, state, or 45672
private sources, to improve the criminal and juvenile justice 45673
systems in the state. All money from federal juvenile justice act 45674
grants shall, if the terms under which the money is received 45675
require that the money be deposited into an interest bearing fund 45676
or account, be deposited in the state treasury to the credit of 45677
the federal juvenile justice program purposes fund, which is 45678
hereby created. All investment earnings shall be credited to the 45679
fund. 45680

(j) Contracting with federal, state, and local agencies, 45681
foundations, corporations, businesses, and persons when necessary 45682
to carry out the duties of the department; 45683

(k) Overseeing the activities of metropolitan county criminal 45684
justice services agencies, administrative planning districts, and 45685
juvenile justice coordinating councils in the state; 45686
45687

(l) Advising the general assembly and governor on legislation and other significant matters that pertain to the improvement and reform of the juvenile justice system in the state;

(m) Preparing and recommending legislation to the general assembly and governor for the improvement of the juvenile justice system in the state;

(n) Assisting, advising, and making any reports that are required by the governor, attorney general, or general assembly;

(o) Adopting rules pursuant to Chapter 119. of the Revised Code.

(2) Division (K)(1) of this section does not limit the discretion or authority of the attorney general with respect to crime victim assistance and criminal and juvenile justice programs.

(3) Nothing in division (K)(1) of this section is intended to diminish or alter the status of the office of the attorney general as a criminal justice services agency;

(4) The governor may appoint any advisory committees to assist the department that the governor considers appropriate or that are required under any state or federal law.

Sec. 5139.29. The department of youth services shall adopt and promulgate regulations prescribing the method of calculating the amount of and the time and manner for the payment of financial assistance granted under sections 5139.27~~7~~ and 5139.271~~7~~~~and~~ 5139.28 of the Revised Code, for the construction or acquisition of a district detention home established under section 2151.34 of the Revised Code, or for the construction and maintenance of a school, forestry camp, or other facility established under section 2151.65 of the Revised Code.

Sec. 5139.31. The department of youth services may inspect 45718
any school, forestry camp, district detention home, or other 45719
facility for which an application for financial assistance has 45720
been made to the department under section 2151.341, 2151.3416, or 45721
2151.651, ~~or 2151.652~~ of the Revised Code or for which financial 45722
assistance has been granted by the department under section 45723
5139.27, 5139.271, ~~5139.28,~~ or 5139.281 of the Revised Code. The 45724
inspection may include, but need not be limited to, examination 45725
and evaluation of the physical condition of the school, forestry 45726
camp, district detention home, or other facility, including any 45727
equipment used in connection with it; observation and evaluation 45728
of the training and treatment of children admitted to it; 45729
examination and analysis and copying of any papers, records, or 45730
other documents relating to the qualifications of personnel, the 45731
commitment of children to it, and its administration. 45732

Sec. 5139.87. There are hereby created in the state treasury 45733
the federal juvenile justice programs funds. A separate fund shall 45734
be established each federal fiscal year. All federal grants and 45735
other moneys received for federal juvenile programs shall be 45736
deposited into the funds. All receipts deposited into the funds 45737
shall be used for federal juvenile programs. All investment 45738
earnings on the cash balance in a federal juvenile program fund 45739
shall be credited to that fund for the appropriate federal fiscal 45740
year. 45741

Sec. 5153.06. The county children services board may enter 45742
into a written contract with the board's executive director 45743
specifying terms and conditions of the executive director's 45744
employment. The executive director shall not be in the classified 45745
civil service. The period of the contract shall not exceed three 45746
years. Such a contract shall in no way abridge the right of the 45747
county children services board to terminate the employment of the 45748

executive director as an unclassified employee at will, but may 45749
specify terms and conditions for any such termination. 45750

Sec. 5153.16. (A) Except as provided in section 2151.422 of 45751
the Revised Code, in accordance with rules of the department of 45752
job and family services, and on behalf of children in the county 45753
whom the public children services agency considers to be in need 45754
of public care or protective services, the public children 45755
services agency shall do all of the following: 45756

(1) Make an investigation concerning any child alleged to be 45757
an abused, neglected, or dependent child; 45758

(2) Enter into agreements with the parent, guardian, or other 45759
person having legal custody of any child, or with the department 45760
of job and family services, department of mental health, 45761
department of mental retardation and developmental disabilities, 45762
other department, any certified organization within or outside the 45763
county, or any agency or institution outside the state, having 45764
legal custody of any child, with respect to the custody, care, or 45765
placement of any child, or with respect to any matter, in the 45766
interests of the child, provided the permanent custody of a child 45767
shall not be transferred by a parent to the public children 45768
services agency without the consent of the juvenile court; 45769
45770

(3) Accept custody of children committed to the public 45771
children services agency by a court exercising juvenile 45772
jurisdiction; 45773

(4) Provide such care as the public children services agency 45774
considers to be in the best interests of any child adjudicated to 45775
be an abused, neglected, or dependent child the agency finds to be 45776
in need of public care or service; 45777

(5) Provide social services to any unmarried girl adjudicated 45778

to be an abused, neglected, or dependent child who is pregnant	45779
with or has been delivered of a child;	45780
(6) Make available to the bureau for children with medical	45781
handicaps of the department of health at its request any	45782
information concerning a crippled child found to be in need of	45783
treatment under sections 3701.021 to 3701.028 of the Revised Code	45784
who is receiving services from the public children services	45785
agency;	45786
(7) Provide temporary emergency care for any child considered	45787
by the public children services agency to be in need of such care,	45788
without agreement or commitment;	45789
(8) Find certified foster homes, within or outside the	45790
county, for the care of children, including handicapped children	45791
from other counties attending special schools in the county;	45792
(9) Subject to the approval of the board of county	45793
commissioners and the state department of job and family services,	45794
establish and operate a training school or enter into an agreement	45795
with any municipal corporation or other political subdivision of	45796
the county respecting the operation, acquisition, or maintenance	45797
of any children's home, training school, or other institution for	45798
the care of children maintained by such municipal corporation or	45799
political subdivision;	45800
(10) Acquire and operate a county children's home, establish,	45801
maintain, and operate a receiving home for the temporary care of	45802
children, or procure certified foster homes for this purpose;	45803
	45804
(11) Enter into an agreement with the trustees of any	45805
district children's home, respecting the operation of the district	45806
children's home in cooperation with the other county boards in the	45807
district;	45808
(12) Cooperate with, make its services available to, and act	45809

as the agent of persons, courts, the department of job and family services, the department of health, and other organizations within and outside the state, in matters relating to the welfare of children, except that the public children services agency shall not be required to provide supervision of or other services related to the exercise of parenting time rights granted pursuant to section 3109.051 or 3109.12 of the Revised Code or companionship or visitation rights granted pursuant to section 3109.051, 3109.11, or 3109.12 of the Revised Code unless a juvenile court, pursuant to Chapter 2151. of the Revised Code, or a common pleas court, pursuant to division (E)(6) of section 3113.31 of the Revised Code, requires the provision of supervision or other services related to the exercise of the parenting time rights or companionship or visitation rights;

(13) Make investigations at the request of any superintendent of schools in the county or the principal of any school concerning the application of any child adjudicated to be an abused, neglected, or dependent child for release from school, where such service is not provided through a school attendance department;

(14) Administer funds provided under Title IV-E of the "Social Security Act," 94 Stat. 501 (1980), 42 U.S.C.A. 671, as amended, in accordance with rules adopted under section 5101.141 of the Revised Code;

(15) In addition to administering Title IV-E adoption assistance funds, enter into agreements to make adoption assistance payments under section 5153.163 of the Revised Code;

(16) Implement a system of risk assessment, in accordance with rules adopted by the director of job and family services, to assist the public children services agency in determining the risk of abuse or neglect to a child;

(17) Enter into a plan of cooperation with the board of 45841
county commissioners under section 307.983 of the Revised Code and 45842
comply with the partnership agreement the board enters into under 45843
section 307.98 of the Revised Code and contracts the board enters 45844
into under sections 307.981 and 307.982 of the Revised Code that 45845
affect the public children services agency; 45846

(18) Make reasonable efforts to prevent the removal of an 45847
alleged or adjudicated abused, neglected, or dependent child from 45848
the child's home, eliminate the continued removal of the child 45849
from the child's home, or make it possible for the child to return 45850
home safely, except that reasonable efforts of that nature are not 45851
required when a court has made a determination under division 45852
(A)(2) of section 2151.419 of the Revised Code; 45853

(19) Make reasonable efforts to place the child in a timely 45854
manner in accordance with the permanency plan approved under 45855
division (E) of section 2151.417 of the Revised Code and to 45856
complete whatever steps are necessary to finalize the permanent 45857
placement of the child; 45858

(20) Administer a Title IV-A program identified under 45859
division (A)(3)(c) or (d) of section 5101.80 of the Revised Code 45860
that the department of job and family services provides for the 45861
public children services agency to administer under the 45862
department's supervision pursuant to section 5101.801 of the 45863
Revised Code. 45864

(B) The public children services agency shall use the system 45865
implemented pursuant to division (B)(16) of this section in 45866
connection with an investigation undertaken pursuant to division 45867
(F)(1) of section 2151.421 of the Revised Code and may use the 45868
system at any other time the agency is involved with any child 45869
when the agency determines that risk assessment is necessary. 45870

(C) Except as provided in section 2151.422 of the Revised 45871

Code, in accordance with rules of the director of job and family 45872
services, and on behalf of children in the county whom the public 45873
children services agency considers to be in need of public care or 45874
protective services, the public children services agency may do 45875
the following: 45876

(1) Provide or find, with other child serving systems, 45877
specialized foster care for the care of children in a specialized 45878
foster home, as defined in section 5103.02 of the Revised Code, 45879
certified under section 5103.03 of the Revised Code; 45880

(2)(a) Except as limited by divisions (C)(2)(b) and (c) of 45881
this section, contract with the following for the purpose of 45882
assisting the agency with its duties: 45883

(i) County departments of job and family services; 45884

(ii) Boards of alcohol, drug addiction, and mental health 45885
services; 45886

(iii) County boards of mental retardation and developmental 45887
disabilities; 45888

(iv) Regional councils of political subdivisions established 45889
under Chapter 167. of the Revised Code; 45890

(v) Private and government providers of services; 45891

(vi) Managed care organizations and prepaid health plans. 45892

(b) A public children services agency contract under division 45893
(C)(2)(a) of this section regarding the agency's duties under 45894
section 2151.421 of the Revised Code may not provide for the 45895
entity under contract with the agency to perform any service not 45896
authorized by the department's rules. 45897

(c) Only a county children services board appointed under 45898
section 5153.03 of the Revised Code that is a public children 45899
services agency may contract under division (C)(2)(a) of this 45900
section. If an entity specified in division (B) or (C) of section 45901

5153.02 of the Revised Code is the public children services agency 45902
for a county, the board of county commissioners may enter into 45903
contracts pursuant to section 307.982 of the Revised Code 45904
regarding the agency's duties. 45905

Sec. 5153.165. If a family is encountering an emergency that 45906
could lead, or has led, to removal of a child from the family's 45907
home pursuant to Chapter 2151. of the Revised Code, the public 45908
children services agency shall determine whether the child could 45909
remain safely with, or be safely returned to, the family if the 45910
emergency were alleviated by providing ~~assistance~~ benefits and 45911
services under the prevention, retention, and contingency program 45912
established under Chapter 5108. of the Revised Code. If it is 45913
determined that the child could remain safely with, or be safely 45914
returned to, the family, the agency, with the cooperation of the 45915
child's family, shall determine the amount of ~~assistance~~ benefits 45916
and services necessary to prevent the removal of the child from 45917
the home or to permit the child's return to the home and may 45918
provide the ~~assistance~~ benefits and services pursuant to a plan of 45919
cooperation entered into under section 307.983 of the Revised 45920
Code. 45921

Sec. 5153.60. The department of job and family services shall 45922
establish a statewide program that provides the training section 45923
5153.122 of the Revised Code requires public children services 45924
agency caseworkers and supervisors to complete. The program may 45925
also provide the preplacement and continuing training described in 45926
sections 5103.039, 5103.0310, and 5103.0311 of the Revised Code 45927
that foster caregivers are required by sections 5103.031, 45928
5103.032, and 5103.033 of the Revised Code to obtain. The program 45929
shall be called the "Ohio child welfare training program." 45930
45931

Sec. 5153.69. The training program steering committee shall 45932
monitor and evaluate the Ohio child welfare training program to 45933
ensure ~~that~~ the following: 45934

(A) That the Ohio child welfare training program is a 45935
competency-based training system that satisfies the training 45936
requirements for public children services agency caseworkers and 45937
supervisors under section 5153.122 of the Revised Code; 45938

(B) That, if the Ohio child welfare training program provides 45939
preplacement or continuing training for foster caregivers, it 45940
meets the same requirements that preplacement training programs 45941
and continuing training programs must meet pursuant to section 45942
5103.038 of the Revised Code to obtain approval by the department 45943
of job and family services, except that the Ohio child welfare 45944
training program is not required to obtain department approval. 45945
45946

Sec. 5153.78. (A) As used in this section: 45947

(1) "Title IV-B" means Title IV-B of the "Social Security Act 45948
of 1967," 81 Stat. 821, 42 U.S.C. 620, as amended. 45949

(2) "Title IV-E" means Title IV-E of the "Social Security 45950
Act," 94 Stat. 501, 42 U.S.C. 670(1980). 45951

(3) "Title XX" has the same meaning as in section 5101.46 of 45952
the Revised Code. 45953

(B) For purposes of adequately funding the Ohio child welfare 45954
training program, the department of job and family services ~~shall~~ 45955
may use any of the following ~~to adequately fund the Ohio child~~ 45956
~~welfare training program~~: 45957

(1) The federal financial participation funds withheld 45958
pursuant to division (D) of section 5101.141 of the Revised Code 45959
in an amount determined by the department; 45960

(2) Funds available under Title XX, Title IV-B, and Title 45961
IV-E to pay for training costs; 45962

(3) ~~Any other~~ Other available state or federal funds. 45963

Sec. 5703.17. (A) In making an investigation as to any 45964
company, firm, corporation, person, association, partnership, or 45965
public utility subject to the laws which the tax commissioner is 45966
required to administer, the commissioner may appoint by an order 45967
in writing an agent, a tax auditor agent, or a tax auditor agent 45968
manager, whose duties shall be prescribed in such order. 45969

In the discharge of ~~his~~ such agent's duties ~~such,~~ the agent 45970
shall have every power of an inquisitorial nature granted by law 45971
to the commissioner, and the same powers as a notary public as to 45972
the taking of depositions, and all powers given by law to a notary 45973
public relative to depositions are hereby given to such agent. 45974

(B) No person shall be appointed as a tax auditor agent or a 45975
tax auditor agent manager, unless that person meets one of the 45976
following requirements: 45977

(1) The person holds from an accredited college or university 45978
a baccalaureate or higher degree in accounting, business, business 45979
administration, public administration, or management, a doctoral 45980
degree in law, a bachelor of laws degree, or a master of laws 45981
degree in taxation. 45982

(2) The person possesses a current certified public 45983
accountant, certified managerial accountant, or certified internal 45984
auditor certificate; a professional tax designation issued by the 45985
institute for professionals in taxation or the international 45986
association of assessing officers; or a designation as an enrolled 45987
agent of the Internal Revenue Service. 45988

(3) The person has accounting, auditing, or taxation 45989
experience that is acceptable to the department of taxation. 45990

(4) The person has experience as a tax commissioner agent, 45991
tax auditor agent, or supervisor of tax agents that is acceptable 45992
to the department of taxation. 45993

Sec. 5703.49. (A) As used in this section, "internet" means 45994
the international computer network of both federal and nonfederal 45995
interoperable packet switched data networks, including the 45996
graphical subnetwork known as the world wide web. 45997

(B) On or before December 31, 2001, the tax commissioner 45998
shall establish an electronic site accessible through the 45999
internet. The tax commissioner shall provide access on the site 46000
for each municipal corporation that has not established its own 46001
electronic site to post documents or information required under 46002
section 718.07 of the Revised Code. The tax commissioner shall 46003
provide electronic links for each municipal corporation that 46004
establishes a site under that section and for which a uniform 46005
resource locator has been provided to the tax commissioner. The 46006
tax commissioner is not responsible for the accuracy of the posted 46007
information, and is not liable for any inaccurate or outdated 46008
information provided by a municipal corporation. The tax 46009
commissioner may adopt rules governing the format and means of 46010
submitting such documents or information and other matters 46011
necessary to implement this section. The tax commissioner may 46012
charge municipal corporations a fee to defray the cost of 46013
establishing and maintaining the electronic site established under 46014
this section. 46015

(C) The tax commissioner shall deposit any fees received 46016
under this section to the credit of the municipal internet site 46017
fund, which is hereby created in the state treasury. The 46018
commissioner shall use the fund for costs of establishing and 46019
maintaining the electronic site established under this section. 46020

Sec. 5705.091. The board of county commissioners of each 46021
county shall establish a county mental retardation and 46022
developmental disabilities general fund. Notwithstanding sections 46023
5705.09 and 5705.10 of the Revised Code, proceeds from levies 46024
under section 5705.222 and division (L) of section 5705.19 of the 46025
Revised Code shall be deposited to the credit of the county mental 46026
retardation and developmental disabilities general fund. Accounts 46027
shall be established within the county mental retardation and 46028
developmental disabilities general fund for each of the several 46029
particular purposes of the levies as specified in the resolutions 46030
under which the levies were approved, and proceeds from different 46031
levies that were approved for the same particular purpose shall be 46032
credited to accounts for that purpose. Other money received by the 46033
county for the purposes of Chapters 3323. and 5126. of the Revised 46034
Code and not required by state or federal law to be deposited to 46035
the credit of a different fund shall also be deposited to the 46036
credit of the county mental retardation and developmental 46037
disabilities general fund, in an account appropriate to the 46038
particular purpose for which the money was received. Unless 46039
otherwise provided by law, an unexpended balance at the end of a 46040
fiscal year in any account in the county mental retardation and 46041
developmental disabilities general fund shall be appropriated the 46042
next fiscal year to the same fund. 46043

A county board of mental retardation and developmental 46044
disabilities may request, by resolution, that the board of county 46045
commissioners establish a county mental retardation and 46046
developmental disabilities capital fund for money to be used for 46047
acquisition, construction, or improvement of capital facilities or 46048
acquisition of capital equipment used in providing services to 46049
mentally retarded and developmentally disabled persons. The county 46050
board of mental retardation and developmental disabilities shall 46051
transmit a certified copy of the resolution to the board of county 46052

commissioners. Upon receiving the resolution, the board of county 46053
commissioners shall establish a county mental retardation and 46054
developmental disabilities capital fund. 46055

A county board shall request, by resolution, that the board 46056
of county commissioners establish a county MR/DD medicaid reserve 46057
fund. On receipt of the resolution, the board of county 46058
commissioners shall establish a county MR/DD medicaid reserve 46059
fund. The portion of federal revenue funds that the county board 46060
earns for providing habilitation center services, medicaid case 46061
management services, and home and community-based services that is 46062
needed for the county board to pay for extraordinary costs, 46063
including extraordinary costs for services to individuals with 46064
mental retardation or other developmental disability, and ensure 46065
the availability of adequate funds in the event a county property 46066
tax levy for services for individuals with mental retardation or 46067
other developmental disability fails shall be deposited into the 46068
fund. The county board shall use money in the fund for those 46069
purposes in accordance with rules adopted under section 5123.0413 46070
of the Revised Code. 46071

Sec. 5705.19. This section does not apply to school districts 46072
or county school financing districts. 46073

The taxing authority of any subdivision at any time and in 46074
any year, by vote of two-thirds of all the members of the taxing 46075
authority, may declare by resolution and certify the resolution to 46076
the board of elections not less than seventy-five days before the 46077
election upon which it will be voted that the amount of taxes that 46078
may be raised within the ten-mill limitation will be insufficient 46079
to provide for the necessary requirements of the subdivision and 46080
that it is necessary to levy a tax in excess of that limitation 46081
for any of the following purposes: 46082

(A) For current expenses of the subdivision, except that the 46083

total levy for current expenses of a detention home district or 46084
district organized under section 2151.65 of the Revised Code shall 46085
not exceed two mills and that the total levy for current expenses 46086
of a combined district organized under sections 2151.34 and 46087
2151.65 of the Revised Code shall not exceed four mills; 46088

(B) For the payment of debt charges on certain described 46089
bonds, notes, or certificates of indebtedness of the subdivision 46090
issued subsequent to January 1, 1925; 46091

(C) For the debt charges on all bonds, notes, and 46092
certificates of indebtedness issued and authorized to be issued 46093
prior to January 1, 1925; 46094

(D) For a public library of, or supported by, the subdivision 46095
under whatever law organized or authorized to be supported; 46096
46097

(E) For a municipal university, not to exceed two mills over 46098
the limitation of one mill prescribed in section 3349.13 of the 46099
Revised Code; 46100

(F) For the construction or acquisition of any specific 46101
permanent improvement or class of improvements that the taxing 46102
authority of the subdivision may include in a single bond issue; 46103

(G) For the general construction, reconstruction, 46104
resurfacing, and repair of streets, roads, and bridges in 46105
municipal corporations, counties, or townships; 46106

(H) For recreational purposes; 46107

(I) For the purpose of providing and maintaining fire 46108
apparatus, appliances, buildings, or sites therefor, or sources of 46109
water supply and materials therefor, or the establishment and 46110
maintenance of lines of fire alarm telegraph, or the payment of 46111
permanent, part-time, or volunteer firefighters or firefighting 46112
companies to operate the same, including the payment of the 46113

firefighter employers' contribution required under section 742.34 46114
of the Revised Code, or the purchase of ambulance equipment, or 46115
the provision of ambulance, paramedic, or other emergency medical 46116
services operated by a fire department or firefighting company; 46117

(J) For the purpose of providing and maintaining motor 46118
vehicles, communications, and other equipment used directly in the 46119
operation of a police department, or the payment of salaries of 46120
permanent police personnel, including the payment of the police 46121
officer employers' contribution required under section 742.33 of 46122
the Revised Code, or the payment of the costs incurred by 46123
townships as a result of contracts made with other political 46124
subdivisions in order to obtain police protection, or the 46125
provision of ambulance or emergency medical services operated by a 46126
police department; 46127

(K) For the maintenance and operation of a county home; 46128

(L) For community mental retardation and developmental 46129
disabilities programs and services pursuant to Chapter 5126. of 46130
the Revised Code, except that the procedure for such levies shall 46131
be as provided in section 5705.222 of the Revised Code; 46132

(M) For regional planning; 46133

(N) For a county's share of the cost of maintaining and 46134
operating schools, district detention homes, forestry camps, or 46135
other facilities, or any combination thereof, established under 46136
section 2151.34 or 2151.65 of the Revised Code or both of those 46137
sections; 46138

(O) For providing for flood defense, providing and 46139
maintaining a flood wall or pumps, and other purposes to prevent 46140
floods; 46141

(P) For maintaining and operating sewage disposal plants and 46142
facilities; 46143

(Q) For the purpose of purchasing, acquiring, constructing, 46144
enlarging, improving, equipping, repairing, maintaining, or 46145
operating, or any combination of the foregoing, a county transit 46146
system pursuant to sections 306.01 to 306.13 of the Revised Code, 46147
or of making any payment to a board of county commissioners 46148
operating a transit system or a county transit board pursuant to 46149
section 306.06 of the Revised Code; 46150

(R) For the subdivision's share of the cost of acquiring or 46151
constructing any schools, forestry camps, detention homes, or 46152
other facilities, or any combination thereof, under section 46153
2151.34 or 2151.65 of the Revised Code or both of those sections; 46154

(S) For the prevention, control, and abatement of air 46155
pollution; 46156

(T) For maintaining and operating cemeteries; 46157

(U) For providing ambulance service, emergency medical 46158
service, or both; 46159

(V) For providing for the collection and disposal of garbage 46160
or refuse, including yard waste; 46161

(W) For the payment of the police officer employers' 46162
contribution or the firefighter employers' contribution required 46163
under sections 742.33 and 742.34 of the Revised Code; 46164

(X) For the construction and maintenance of a drainage 46165
improvement pursuant to section 6131.52 of the Revised Code; 46166

(Y) For providing or maintaining senior citizens services or 46167
facilities as authorized by section 307.694, 307.85, 505.70, or 46168
505.706 or division (EE) of section 717.01 of the Revised Code; 46169

(Z) For the provision and maintenance of zoological park 46170
services and facilities as authorized under section 307.76 of the 46171
Revised Code; 46172

(AA) For the maintenance and operation of a free public 46173

museum of art, science, or history; 46174

(BB) For the establishment and operation of a 9-1-1 system, 46175
as defined in section 4931.40 of the Revised Code; 46176

(CC) For the purpose of acquiring, rehabilitating, or 46177
developing rail property or rail service. As used in this 46178
division, "rail property" and "rail service" have the same 46179
meanings as in section 4981.01 of the Revised Code. This division 46180
applies only to a county, township, or municipal corporation. 46181

(DD) For the purpose of acquiring property for, constructing, 46182
operating, and maintaining community centers as provided for in 46183
section 755.16 of the Revised Code; 46184

(EE) For the creation and operation of an office or joint 46185
office of economic development, for any economic development 46186
purpose of the office, and to otherwise provide for the 46187
establishment and operation of a program of economic development 46188
pursuant to sections 307.07 and 307.64 of the Revised Code; 46189

(FF) For the purpose of acquiring, establishing, 46190
constructing, improving, equipping, maintaining, or operating, or 46191
any combination of the foregoing, a township airport, landing 46192
field, or other air navigation facility pursuant to section 505.15 46193
of the Revised Code; 46194

(GG) For the payment of costs incurred by a township as a 46195
result of a contract made with a county pursuant to section 46196
505.263 of the Revised Code in order to pay all or any part of the 46197
cost of constructing, maintaining, repairing, or operating a water 46198
supply improvement; 46199

(HH) For a board of township trustees to acquire, other than 46200
by appropriation, an ownership interest in land, water, or 46201
wetlands, or to restore or maintain land, water, or wetlands in 46202
which the board has an ownership interest, not for purposes of 46203
recreation, but for the purposes of protecting and preserving the 46204

natural, scenic, open, or wooded condition of the land, water, or wetlands against modification or encroachment resulting from occupation, development, or other use, which may be styled as protecting or preserving "greenspace" in the resolution, notice of election, or ballot form; 46205
46206
46207
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46209

(II) For the support by a county of a crime victim assistance program that is provided and maintained by a county agency or a private, nonprofit corporation or association under section 307.62 of the Revised Code; 46210
46211
46212
46213

(JJ) For any or all of the purposes set forth in divisions (I) and (J) of this section. This division applies only to a township. 46214
46215
46216

(KK) For a countywide public safety communications system under section 307.63 of the Revised Code. This division applies only to counties. 46217
46218
46219

(LL) For the support by a county of criminal justice services under section 307.45 of the Revised Code; 46220
46221

(MM) For the purpose of maintaining and operating a jail or other detention facility as defined in section 2921.01 of the Revised Code; 46222
46223
46224

(NN) For purchasing, maintaining, or improving, or any combination of the foregoing, real estate on which to hold agricultural fairs. This division applies only to a county. 46225
46226
46227

(OO) For constructing, rehabilitating, repairing, or maintaining sidewalks, walkways, trails, bicycle pathways, or similar improvements, or acquiring ownership interests in land necessary for the foregoing improvements, by a board of township trustees; 46228
46229
46230
46231
46232

(PP) For both of the purposes set forth in divisions (G) and (OO) of this section. This division applies only to a township. 46233
46234

(QQ) For both of the purposes set forth in divisions (H) and (HH) of this section. This division applies only to a township.

(RR) For the legislative authority of a municipal corporation, board of county commissioners of a county, or board of township trustees of a township to acquire agricultural easements, as defined in section 5301.67 of the Revised Code, and to supervise and enforce the easements.

(SS) For both of the purposes set forth in divisions (BB) and (KK) of this section. This division applies only to a county.

The resolution shall be confined to the purpose or purposes described in one division of this section, to which the revenue derived therefrom shall be applied. The existence in any other division of this section of authority to levy a tax for any part or all of the same purpose or purposes does not preclude the use of such revenues for any part of the purpose or purposes of the division under which the resolution is adopted.

The resolution shall specify the amount of the increase in rate that it is necessary to levy, the purpose of that increase in rate, and the number of years during which the increase in rate shall be in effect, which may or may not include a levy upon the duplicate of the current year. The number of years may be any number not exceeding five, except as follows:

(1) When the additional rate is for the payment of debt charges, the increased rate shall be for the life of the indebtedness.

(2) When the additional rate is for any of the following, the increased rate shall be for a continuing period of time:

(a) For the current expenses for a detention home district, a district organized under section 2151.65 of the Revised Code, or a combined district organized under sections 2151.34 and 2151.65 of the Revised Code;

(b) For providing a county's share of the cost of maintaining 46266
and operating schools, district detention homes, forestry camps, 46267
or other facilities, or any combination thereof, established under 46268
section 2151.34 or 2151.65 of the Revised Code or under both of 46269
those sections. 46270

(3) When the additional rate is for any of the following, the 46271
increased rate may be for a continuing period of time: 46272

(a) For the purposes set forth in division (I), (J), (U), or 46273
(KK) of this section; 46274

(b) For the maintenance and operation of a joint recreation 46275
district; 46276

(c) A levy imposed by a township for the purposes set forth 46277
in division (G) of this section. 46278

(4) When the increase is for the purpose set forth in 46279
division (D) or (CC) of this section or for both of the purposes 46280
set forth in divisions (G) and (OO) of this section, the tax levy 46281
may be for any specified number of years or for a continuing 46282
period of time, as set forth in the resolution. 46283

(5) When the additional rate is for the purpose described in 46284
division (Z) of this section, the increased rate shall be for any 46285
number of years not exceeding ten. 46286

A levy for the purposes set forth in division (I), (J), or 46287
(U) of this section, and a levy imposed by a township for the 46288
purposes set forth in division (G) of this section, may be reduced 46289
pursuant to section 5705.261 or 5705.31 of the Revised Code. A 46290
levy for the purposes set forth in division (I), (J), or (U) of 46291
this section, and a levy imposed by a township for the purposes 46292
set forth in division (G) of this section, may also be terminated 46293
or permanently reduced by the taxing authority if it adopts a 46294
resolution stating that the continuance of the levy is unnecessary 46295
and the levy shall be terminated or that the millage is excessive 46296

and the levy shall be decreased by a designated amount. 46297

A resolution of a detention home district, a district 46298
organized under section 2151.65 of the Revised Code, or a combined 46299
district organized under both sections 2151.34 and 2151.65 of the 46300
Revised Code may include both current expenses and other purposes, 46301
provided that the resolution shall apportion the annual rate of 46302
levy between the current expenses and the other purpose or 46303
purposes. The apportionment need not be the same for each year of 46304
the levy, but the respective portions of the rate actually levied 46305
each year for the current expenses and the other purpose or 46306
purposes shall be limited by the apportionment. 46307

Whenever a board of county commissioners, acting either as 46308
the taxing authority of its county or as the taxing authority of a 46309
sewer district or subdistrict created under Chapter 6117. of the 46310
Revised Code, by resolution declares it necessary to levy a tax in 46311
excess of the ten-mill limitation for the purpose of constructing, 46312
improving, or extending sewage disposal plants or sewage systems, 46313
the tax may be in effect for any number of years not exceeding 46314
twenty, and the proceeds of the tax, notwithstanding the general 46315
provisions of this section, may be used to pay debt charges on any 46316
obligations issued and outstanding on behalf of the subdivision 46317
for the purposes enumerated in this paragraph, provided that any 46318
such obligations have been specifically described in the 46319
resolution. 46320

The resolution shall go into immediate effect upon its 46321
passage, and no publication of the resolution is necessary other 46322
than that provided for in the notice of election. 46323

When the electors of a subdivision have approved a tax levy 46324
under this section, the taxing authority of the subdivision may 46325
anticipate a fraction of the proceeds of the levy and issue 46326
anticipation notes in accordance with section 5705.191 or 5705.193 46327
of the Revised Code. 46328

Sec. 5705.41. No subdivision or taxing unit shall: 46329

(A) Make any appropriation of money except as provided in 46330
Chapter 5705. of the Revised Code; provided, that the 46331
authorization of a bond issue shall be deemed to be an 46332
appropriation of the proceeds of the bond issue for the purpose 46333
for which such bonds were issued, but no expenditure shall be made 46334
from any bond fund until first authorized by the taxing authority; 46335

(B) Make any expenditure of money unless it has been 46336
appropriated as provided in such chapter; 46337

(C) Make any expenditure of money except by a proper warrant 46338
drawn against an appropriate fund; 46339

(D)(1) Except as otherwise provided in division (D)(2) of 46340
this section and section 5705.44 of the Revised Code, make any 46341
contract or give any order involving the expenditure of money 46342
unless there is attached thereto a certificate of the fiscal 46343
officer of the subdivision that the amount required to meet the 46344
obligation or, in the case of a continuing contract to be 46345
performed in whole or in part in an ensuing fiscal year, the 46346
amount required to meet the obligation in the fiscal year in which 46347
the contract is made, has been lawfully appropriated for such 46348
purpose and is in the treasury or in process of collection to the 46349
credit of an appropriate fund free from any previous encumbrances. 46350
This certificate need be signed only by the subdivision's fiscal 46351
officer. Every such contract made without such a certificate shall 46352
be void, and no warrant shall be issued in payment of any amount 46353
due thereon. If no certificate is furnished as required, upon 46354
receipt by the taxing authority of the subdivision or taxing unit 46355
of a certificate of the fiscal officer stating that there was at 46356
the time of the making of such contract or order and at the time 46357
of the execution of such certificate a sufficient sum appropriated 46358
for the purpose of such contract and in the treasury or in process 46359

of collection to the credit of an appropriate fund free from any 46360
previous encumbrances, such taxing authority may authorize the 46361
drawing of a warrant in payment of amounts due upon such contract, 46362
but such resolution or ordinance shall be passed within thirty 46363
days from the receipt of such certificate; provided that, if the 46364
amount involved is less than one hundred dollars in the case of 46365
counties or one thousand dollars in the case of all other 46366
subdivisions or taxing units, the fiscal officer may authorize it 46367
to be paid without such affirmation of the taxing authority of the 46368
subdivision or taxing unit, if such expenditure is otherwise 46369
valid. 46370

(2) Annually, the board of county commissioners may adopt a 46371
resolution exempting for the current fiscal year county purchases 46372
of seven hundred fifty dollars or less from the requirement of 46373
division (D)(1) of this section that a certificate be attached to 46374
any contract or order involving the expenditure of money. The 46375
resolution shall state the dollar amount that is exempted from the 46376
certificate requirement and whether the exemption applies to all 46377
purchases, to one or more specific classes of purchases, or to the 46378
purchase of one or more specific items. Prior to the adoption of 46379
the resolution, the board shall give written notice to the county 46380
auditor that it intends to adopt the resolution. The notice shall 46381
state the dollar amount that is proposed to be exempted and 46382
whether the exemption would apply to all purchases, to one or more 46383
specific classes of purchases, or to the purchase of one or more 46384
specific items. The county auditor may review and comment on the 46385
proposal, and shall send any comments to the board within fifteen 46386
days after receiving the notice. The board shall wait at least 46387
fifteen days after giving the notice to the auditor before 46388
adopting the resolution. A person authorized to make a county 46389
purchase in a county that has adopted such a resolution shall 46390
prepare and file with the county auditor, within three business 46391
days after incurring an obligation not requiring a certificate, a 46392

written document specifying the purpose and amount of the expenditure, the date of the purchase, the name of the vendor, and such additional information as the auditor of state may prescribe.

(3) Upon certification by the auditor or other chief fiscal officer that a certain sum of money, not in excess of five thousand dollars, has been lawfully appropriated, authorized, or directed for a certain purpose and is in the treasury or in the process of collection to the credit of a specific line-item appropriation account in a certain fund free from previous and then outstanding obligations or certifications, then for such purpose and from such line-item appropriation account in such fund, over a period not exceeding three months and not extending beyond the end of the fiscal year, expenditures may be made, orders for payment issued, and contracts or obligations calling for or requiring the payment of money made and assumed; provided, that the aggregate sum of money included in and called for by such expenditures, orders, contracts, and obligations shall not exceed the sum so certified. Such a certification need be signed only by the fiscal officer of the subdivision or the taxing district and may, but need not, be limited to a specific vendor. An itemized statement of obligations incurred and expenditures made under such certificate shall be rendered to the auditor or other chief fiscal officer before another such certificate may be issued, and not more than one such certificate shall be outstanding at a time.

In addition to providing the certification for expenditures of five thousand dollars or less as provided in this division, a subdivision also may make expenditures, issue orders for payment, and make contracts or obligations calling for or requiring the payment of money made and assumed for specified permitted purposes from a specific line-item appropriation account in a specified fund for a sum of money exceeding five thousand dollars upon the certification by the fiscal officer of the subdivision that this

sum of money has been lawfully appropriated, authorized, or 46425
directed for a permitted purpose and is in the treasury or in the 46426
process of collection to the credit of the specific line-item 46427
appropriation account in the specified fund free from previous and 46428
then-outstanding obligations or certifications; provided that the 46429
aggregate sum of money included in and called for by the 46430
expenditures, orders, and obligations shall not exceed the 46431
certified sum. The purposes for which a subdivision may lawfully 46432
appropriate, authorize, or issue such a certificate are the 46433
services of an accountant, architect, attorney at law, physician, 46434
professional engineer, construction project manager, consultant, 46435
surveyor, or appraiser by or on behalf of the subdivision or 46436
contracting authority; fuel oil, gasoline, food items, roadway 46437
materials, and utilities; and any purchases exempt from 46438
competitive bidding under section 125.04 of the Revised Code and 46439
any other specific expenditure that is a recurring and reasonably 46440
predictable operating expense. Such a certification shall not 46441
extend beyond the end of the fiscal year or, in the case of a 46442
board of county commissioners that has established a quarterly 46443
spending plan under section 5705.392 of the Revised Code, beyond 46444
the quarter to which the plan applies. Such a certificate shall be 46445
signed by the fiscal officer and may, but need not, be limited to 46446
a specific vendor. An itemized statement of obligations incurred 46447
and expenditures made under such a certificate shall be rendered 46448
to the fiscal officer for each certificate issued. More than one 46449
such certificate may be outstanding at any time. 46450

In any case in which a contract is entered into upon a per 46451
unit basis, the head of the department, board, or commission for 46452
the benefit of which the contract is made shall make an estimate 46453
of the total amount to become due upon such contract, which 46454
estimate shall be certified in writing to the fiscal officer of 46455
the subdivision. Such a contract may be entered into if the 46456

appropriation covers such estimate, or so much thereof as may be 46457
due during the current year. In such a case the certificate of the 46458
fiscal officer based upon the estimate shall be a sufficient 46459
compliance with the law requiring a certificate. 46460

Any certificate of the fiscal officer attached to a contract 46461
shall be binding upon the political subdivision as to the facts 46462
set forth therein. Upon request of any person receiving an order 46463
or entering into a contract with any political subdivision, the 46464
certificate of the fiscal officer shall be attached to such order 46465
or contract. "Contract" as used in this section excludes current 46466
payrolls of regular employees and officers. 46467

Taxes and other revenue in process of collection, or the 46468
proceeds to be derived from authorized bonds, notes, or 46469
certificates of indebtedness sold and in process of delivery, 46470
shall for the purpose of this section be deemed in the treasury or 46471
in process of collection and in the appropriate fund. This section 46472
applies neither to the investment of sinking funds by the trustees 46473
of such funds, nor to investments made under sections 731.56 to 46474
731.59 of the Revised Code. 46475

No district authority shall, in transacting its own affairs, 46476
do any of the things prohibited to a subdivision by this section, 46477
but the appropriation referred to shall become the appropriation 46478
by the district authority, and the fiscal officer referred to 46479
shall mean the fiscal officer of the district authority. 46480

Sec. 5705.44. When contracts or leases run beyond the 46481
termination of the fiscal year in which they are made, the fiscal 46482
officer of the taxing authority shall make a certification for the 46483
amount required to meet the obligation of such contract or lease 46484
maturing in such fiscal year. The amount of the obligation under 46485
such contract or lease remaining unfulfilled at the end of a 46486
fiscal year, and which will become payable during the next fiscal 46487

year, shall be included in the annual appropriation measure for 46488
the next year as a fixed charge. 46489

The certificate required by section 5705.41 of the Revised 46490
Code as to money in the treasury shall not be required for 46491
contracts on which payments are to be made from the earnings of a 46492
publicly operated water works or public utility, but in the case 46493
of any such contract made without such certification, no payment 46494
shall be made on account thereof, and no claim or demand thereon 46495
shall be recoverable, except out of such earnings. That 46496
certificate also shall not be required if requiring the 46497
certificate makes it impossible for a county board of mental 46498
retardation and developmental disabilities to pay the nonfederal 46499
share of medicaid expenditures that the county board is required 46500
by division (A) of section 5126.056 of the Revised Code to pay. 46501

Sec. 5709.17. (A) Real estate held or occupied by an 46502
association or corporation, organized or incorporated under the 46503
laws of this state relative to soldiers' memorial associations, 46504
monumental building associations, or cemetery associations or 46505
corporations, which in the opinion of the trustees, directors, or 46506
managers thereof is necessary and proper to carry out the object 46507
intended for such association or corporation, shall be exempt from 46508
taxation. 46509

(B) Real estate and tangible personal property held or 46510
occupied by a war veterans' organization, which is organized 46511
exclusively for charitable purposes and incorporated under the 46512
laws of this state or the United States, except real estate held 46513
by such organization for the production of rental income, shall be 46514
exempt from taxation. 46515

(C) Tangible personal property held by a corporation 46516
chartered under 112 Stat. 1335, 36 U.S.C.A. 40701, described in 46517
section 501(c)(3) of the Internal Revenue Code, and exempt from 46518

taxation under section 501(a) of the Internal Revenue Code shall 46519
be exempt from taxation if it is surplus property obtained as 46520
described in 112 Stat. 1340, 36 U.S.C.A. 40730. 46521

Sec. 5711.33. (A)(1) When a county treasurer receives a 46522
certificate from a county auditor pursuant to division (A) of 46523
section 5711.32 of the Revised Code charging the treasurer with 46524
the collection of an amount of taxes due as the result of a 46525
deficiency assessment, the treasurer shall immediately prepare and 46526
mail a tax bill to the taxpayer owing such tax. The tax bill shall 46527
contain the name of the taxpayer; the taxable value, tax rate, and 46528
taxes charged for each year being assessed; the total amount of 46529
taxes due; the final date payment may be made without additional 46530
penalty; and any other information the treasurer considers 46531
pertinent or necessary. Taxes due and payable as a result of a 46532
deficiency assessment, less any amount specifically excepted from 46533
collection under division (B) of section 5711.32 of the Revised 46534
Code, shall be paid with interest thereon as prescribed by section 46535
5719.041 of the Revised Code on or before the sixtieth day 46536
following the date of issuance of the certificate by the county 46537
auditor. The balance of taxes found due and payable after a final 46538
determination by the tax commissioner or a final judgment of the 46539
board of tax appeals or any court to which such final judgment may 46540
be appealed, shall be paid with interest thereon as prescribed by 46541
section 5719.041 of the Revised Code on or before the sixtieth day 46542
following the date of certification by the auditor to the 46543
treasurer pursuant to division (C) of section 5711.32 of the 46544
Revised Code of such final determination or judgment. Such final 46545
dates for payment shall be determined and exhibited on the tax 46546
bill by the treasurer. 46547

(2) If, on or before the sixtieth day following the date of a 46548
certification of a deficiency assessment under division (A) of 46549
section 5711.32 of the Revised Code or of a certification of a 46550

final determination or judgment under division (C) of section 46551
5711.32 of the Revised Code, the taxpayer pays the full amount of 46552
taxes and interest due at the time of the receipt of certification 46553
with respect to that assessment, determination, or judgment, no 46554
interest shall accrue or be charged with respect to that 46555
assessment, determination, or judgment for the period that begins 46556
on the first day of the month in which the certification is made 46557
and that ends on the last day of the month preceding the month in 46558
which such sixtieth day occurs. 46559

(3) In addition to any other means provided by law for the 46560
collection of such taxes, the county treasurer may enter into a 46561
written tax contract with a taxpayer charged with the payment of 46562
taxes as a result of a deficiency assessment issued under division 46563
(A) of section 5711.32 of the Revised Code whereby the taxpayer is 46564
permitted to pay the full amount of those taxes in installments. 46565
Such a contract may not be entered into later than the sixtieth 46566
day after the day the assessment is issued. The terms of the tax 46567
contract shall include the amount payable and the due date of each 46568
installment including the final payment date, which shall be not 46569
more than five years after the date of the first payment. A 46570
receipt shall be issued for each installment payment when paid. 46571
Each payment shall be applied to the taxes and interest in the 46572
same order as each became due and shall be apportioned among the 46573
various funds for which the taxes were levied at the next 46574
succeeding tax settlement. When a payment is not tendered as 46575
agreed upon, the treasurer shall declare the tax contract to be 46576
void and proceed to collect the unpaid balance by any means 46577
provided by law. When the treasurer declares a tax contract to be 46578
void, the remaining tax and interest due becomes delinquent, and 46579
the penalty provided by division (B) of this section shall be 46580
imposed on that remaining tax and interest due. The treasurer may 46581
permit a delinquent tax contract to be undertaken on any 46582
delinquent tax due as provided in section 5719.05 of the Revised 46583

Code. 46584

(B) When the taxes charged, as mentioned in division (A) of 46585
this section, are not paid within the time prescribed by such 46586
division or if a tax contract is not entered into as provided in 46587
division (A)(3) of this section, a penalty of ten per cent of the 46588
amount due and unpaid and interest for the period described in 46589
division (A)(2) of this section shall accrue at the time the 46590
treasurer closes the treasurer's office for business on the last 46591
day so prescribed, but if the taxes are paid within ten days 46592
subsequent to the last day prescribed, the treasurer shall waive 46593
the collection of and the auditor shall remit one-half of the 46594
penalty. The treasurer shall not thereafter accept less than the 46595
full amount of taxes and penalty except as otherwise authorized by 46596
law. Such penalty shall be distributed in the same manner and at 46597
the same time as the tax upon which it has accrued. The whole 46598
amount collected shall be included in the next succeeding 46599
settlement of appropriate taxes. 46600

(C) When the taxes charged, as mentioned in division (A) of 46601
this section, remain unpaid after the final date for payment 46602
prescribed by such division, such charges shall be deemed to be 46603
delinquent taxes. The county auditor shall cause such charges, 46604
including the penalty that has accrued pursuant to this section, 46605
to be added to the delinquent tax duplicate in accordance with 46606
section 5719.04 of the Revised Code. 46607

(D) The county auditor, upon consultation with the county 46608
treasurer, shall remit a penalty imposed under division (B) of 46609
this section or division (C) of section 5719.03 of the Revised 46610
Code for the late payment of taxes when: 46611

(1) The taxpayer could not make timely payment of the tax 46612
because of the negligence or error of the auditor or treasurer in 46613
the performance of a statutory duty relating to the levy or 46614
collection of such tax. 46615

(2) In cases other than those described in division (D)(1) of this section, the taxpayer failed to receive a tax bill or a correct tax bill, and the taxpayer made a good faith effort to obtain such bill within thirty days after the last day for payment of the tax.

(3) The tax was not timely paid because of the death or serious injury of the taxpayer, or the taxpayer's confinement in a hospital within sixty days preceding the last day for payment of the tax if, in any case, the tax was subsequently paid within sixty days after the last day for payment of such tax.

(4) The taxpayer demonstrates to the satisfaction of the auditor that the full payment was properly deposited in the mail in sufficient time for the envelope to be postmarked by the United States postal service on or before the last day for payment of such tax. A private meter postmark on an envelope is not a valid postmark for purposes of establishing the date of payment of such tax.

(E) The taxpayer, upon application, may request the tax commissioner to review the denial of the remission of a penalty by the auditor. The commissioner shall consider the application, determine whether the penalty should be remitted, and certify the determination to the taxpayer and to the treasurer and auditor who shall correct the tax list and duplicate accordingly. The commissioner shall issue orders and instructions for the uniform implementation of this section by all auditors and treasurers, and such orders and instructions shall be followed by such officers.

Sec. 5721.30. As used in sections 5721.30 to 5721.42 of the Revised Code:

(A) "Tax certificate," "certificate," or "duplicate certificate" means a document which may be issued as a physical certificate, in book-entry form, or through an electronic medium,

at the discretion of the county treasurer. Such document shall
contain the information required by section 5721.31 of the Revised
Code and shall be prepared, transferred, or redeemed in the manner
prescribed by sections 5721.30 to 5721.41 of the Revised Code. As
used in those sections, "tax certificate," "certificate," and
"duplicate certificate" do not refer to the delinquent land tax
certificate or the delinquent vacant land tax certificate issued
under section 5721.13 of the Revised Code.

(B) "Certificate parcel" means the parcel of delinquent land
that is the subject of and is described in a tax certificate.

(C) "Certificate holder" means a person who purchases a tax
certificate under section 5721.32 or 5721.33 of the Revised Code,
or a person to whom a tax certificate has been transferred
pursuant to section 5721.36 of the Revised Code.

(D) "Certificate purchase price" means, with respect to the
sale of tax certificates under sections 5721.32 and 5721.33 of the
Revised Code, the amount equal to delinquent taxes, assessments,
penalties, and interest computed under section 323.121 of the
Revised Code charged against a certificate parcel at the time the
tax certificate respecting that parcel is sold, not including any
delinquent taxes, assessments, penalties, interest, and charges,
the lien for which has been conveyed to a certificate holder
through a prior sale of a tax certificate respecting that parcel;
provided, however, that payment of the certificate purchase price
in a sale under section 5721.33 of the Revised Code may be made
wholly in cash or partially in cash and partially by noncash
consideration acceptable to the county treasurer from the
purchaser. In the event that any such noncash consideration is
delivered to pay a portion of the certificate purchase price, such
noncash consideration may be subordinate to the rights of the
holders of other obligations whose proceeds paid the cash portion
of the certificate purchase price.

"Certificate purchase price" also includes the amount of the fee charged by the county treasurer to the purchaser of the certificate under division (H) of section 5721.32 of the Revised Code.

(E) With respect to a sale of tax certificates under section 5721.32 of the Revised Code and except as provided in division (E)(3) of this section, "certificate redemption price" means the amount determined under division (E)(1) or (2) of this section.

(1) During the first year after the date on which a tax certificate is sold, the sum of the following:

(a) The certificate purchase price;

(b) The greater of the following:

(i) Interest, at the certificate rate of interest, accruing during the certificate interest period on the certificate purchase price;

(ii) Six per cent of the certificate purchase price.

(c) The fee charged by the county treasurer to the purchaser of the certificate under division (H) of section 5721.32 of the Revised Code.

(2) After the first year after the date on which a tax certificate is sold, the sum of the following:

(a)(i) If division (E)(1)(b)(i) applied during the first year, the certificate purchase price;

(ii) If division (E)(1)(b)(ii) applied during the first year, the sum of the certificate purchase price plus six per cent of the certificate purchase price.

(b)(i) If division (E)(1)(b)(i) applied during the first year, interest at the certificate rate of interest accruing during the certificate interest period on the certificate purchase price;

(ii) If division (E)(1)(b)(ii) applied during the first year, 46708
interest at the certificate rate of interest, accruing during the 46709
part of the certificate interest period that begins one year after 46710
the date of the sale of the certificate, on the sum of the 46711
certificate purchase price plus six per cent of the certificate 46712
purchase price. 46713

(c) The fee charged by the county treasurer to the purchaser 46714
of the certificate under division (H) of section 5721.32 of the 46715
Revised Code. 46716

(3) If the certificate rate of interest equals zero, the 46717
certificate redemption price equals the certificate purchase price 46718
plus the fee charged by the county treasurer to the purchaser of 46719
the certificate under division (H) of section 5721.32 of the 46720
Revised Code. 46721

(F) With respect to a sale of tax certificates under section 46722
5721.33 of the Revised Code, "certificate redemption price" means 46723
the amount equal to the sum of the following: 46724

(1) The certificate purchase price; 46725

(2) Interest accrued on the certificate purchase price at the 46726
certificate rate of interest from the date on which a tax 46727
certificate is delivered through and including the day immediately 46728
preceding the day on which the certificate redemption price is 46729
paid; 46730

(3) The fee, if any, charged by the county treasurer to the 46731
purchaser of the certificate under division (J) of section 5721.33 46732
of the Revised Code; 46733

(4) Any other fees charged by any county office in connection 46734
with the recording of tax certificates. 46735

(G) "Certificate rate of interest" means the rate of simple 46736
interest per year bid by the winning bidder in an auction of a tax 46737

certificate held under section 5721.32 of the Revised Code, or the 46738
rate of simple interest per year not to exceed eighteen per cent 46739
per year fixed by the county treasurer with respect to any tax 46740
certificate sold pursuant to a negotiated sale under section 46741
5721.33 of the Revised Code. 46742

(H) "Cash" means United States currency, certified checks, 46743
money orders, bank drafts, or electronic transfer of funds, and 46744
excludes any other form of payment. 46745

(I) "The date on which a tax certificate is sold," "the date 46746
the certificate was sold," "the date the certificate is 46747
purchased," and any other phrase of similar content mean, with 46748
respect to a sale pursuant to an auction under section 5721.32 of 46749
the Revised Code, the date designated by the county treasurer for 46750
the submission of bids and, with respect to a negotiated sale 46751
under section 5721.33 of the Revised Code, the date of delivery of 46752
the tax certificates to the purchasers thereof pursuant to a tax 46753
certificate sale/purchase agreement. 46754

(J) "Purchaser of a tax certificate pursuant to section 46755
5721.32 of the Revised Code" means the winning bidder in an 46756
auction of a tax certificate held under section 5721.32 of the 46757
Revised Code. 46758

(K) "Certificate interest period" means, with respect to a 46759
tax certificate sold under section 5721.32 of the Revised Code, 46760
the period beginning on the date the certificate is purchased and, 46761
with respect to a tax certificate sold under section 5721.33 of 46762
the Revised Code, the period beginning on the date of delivery of 46763
the tax certificate, and in either case ending on one of the 46764
following dates: 46765

(1) In the case of foreclosure proceedings instituted under 46766
section 5721.37 of the Revised Code, the date the certificate 46767
holder submits a payment to the treasurer under division (B) of 46768

that section; 46769

(2) In the case of a certificate parcel redeemed under 46770
division (A) or (C) of section 5721.38 of the Revised Code, the 46771
date the owner of record of the certificate parcel, or any other 46772
person entitled to redeem that parcel, pays to the county 46773
treasurer or to the certificate holder, as applicable, the full 46774
amount determined under that section. 46775

(L) "County treasurer" means, with respect to the sale of tax 46776
certificates under section 5721.32, or 5721.33 of the Revised 46777
Code, the county treasurer of a county having a population of at 46778
least two hundred thousand according to the then most recent 46779
federal decennial census ~~and, with respect to the sale of tax~~ 46780
~~certificates under section 5721.33 of the Revised Code, the county~~ 46781
~~treasurer of a county having a population of at least one million~~ 46782
~~four hundred thousand according to the then most recent federal~~ 46783
~~decennial census.~~ 46784

(M) "Qualified trustee" means a trust company within the 46785
state or a bank having the power of a trust company within the 46786
state with a combined capital stock, surplus, and undivided 46787
profits of at least one hundred million dollars. 46788

(N) "Tax certificate sale/purchase agreement" means the 46789
purchase and sale agreement described in division (C) of section 46790
5721.33 of the Revised Code setting forth the certificate purchase 46791
price, plus any applicable premium or less any applicable 46792
discount, including, without limitation, the amount thereof to be 46793
paid in cash and the amount and nature of any noncash 46794
consideration, the date of delivery of the tax certificates, and 46795
the other terms and conditions of the sale, including, without 46796
limitation, the rate of interest that the tax certificates shall 46797
bear. 46798

(O) "Noncash consideration" means any form of consideration 46799

other than cash, including, but not limited to, promissory notes 46800
whether subordinate or otherwise. 46801

(P) "Private attorney" means for purposes of section 5721.37 46802
of the Revised Code, any attorney licensed to practice law in this 46803
state, whether practicing with a firm of attorneys or otherwise, 46804
whose license has not been revoked or otherwise suspended and who 46805
brings foreclosure proceedings pursuant to section 5721.37 of the 46806
Revised Code on behalf of a certificate holder. 46807

(Q) "Related certificate parcel" means, with respect to a 46808
certificate holder, the certificate parcel with respect to which 46809
the certificate holder has purchased and holds a tax certificate 46810
pursuant to sections 5721.30 to 5721.41 of the Revised Code and, 46811
with respect to a tax certificate, the certificate parcel against 46812
which the tax certificate has been sold pursuant to those 46813
sections. 46814

Sec. 5725.31. (A) As used in this section: 46815

(1) "Eligible employee" and "eligible training costs" have 46816
the same meanings as in section 5733.42 of the Revised Code. 46817

(2) "Tax assessed under this chapter" means, in the case of a 46818
dealer in intangibles, the tax assessed under sections 5725.13 to 46819
5725.17 of the Revised Code and, in the case of a domestic 46820
insurance company, the taxes assessed under sections 5725.18 to 46821
5725.26 of the Revised Code. 46822

(3) "Taxpayer" means a dealer in intangibles or a domestic 46823
insurance company subject to a tax assessed under this chapter. 46824

(4) "Credit period" means, in the case of a dealer in 46825
intangibles, the calendar year ending on the thirty-first day of 46826
December next preceding the day the report is required to be 46827
returned under section 5725.14 of the Revised Code and, in the 46828
case of a domestic insurance company, the calendar year ending on 46829

the thirty-first day of December next preceding the day the annual 46830
statement is required to be returned under section 5725.18 or 46831
5725.181 of the Revised Code. 46832

(B) There is hereby allowed a nonrefundable credit against 46833
the tax imposed under this chapter for a taxpayer for which a tax 46834
credit certificate is issued under section 5733.42 of the Revised 46835
Code. The credit may be claimed for credit periods beginning on or 46836
after January 1, ~~2001~~ 2003, and ending on or before December 31, 46837
~~2003~~ 2005. The amount of the credit for the credit period 46838
beginning on January 1, 2003, shall equal one-half of the average 46839
of the eligible training costs paid or incurred by the taxpayer 46840
during ~~the three~~ calendar years ~~immediately preceding the credit~~ 46841
~~period for which the credit is claimed~~ 1998, 1999, and 2000, not 46842
to exceed one thousand dollars for each eligible employee on 46843
account of whom eligible training costs were paid or incurred by 46844
the taxpayer. The amount of the credit for the credit period 46845
beginning on January 1, 2004, shall equal one-half of the average 46846
of the eligible training costs paid or incurred by the taxpayer 46847
during calendar years 2002, 2003, and 2004, not to exceed one 46848
thousand dollars for each eligible employee on account of whom 46849
eligible training costs were paid or incurred by the taxpayer. The 46850
amount of the credit for the credit period beginning on January 1, 46851
2005, shall equal one-half of the average of the eligible training 46852
costs paid or incurred by the taxpayer during calendar years 2003, 46853
2004, and 2005, not to exceed one thousand dollars for each 46854
eligible employee on account of whom eligible training costs were 46855
paid or incurred by the taxpayer. The credit claimed by a taxpayer 46856
each credit period shall not exceed one hundred thousand dollars. 46857

A taxpayer shall apply to the director of job and family 46858
services for a tax credit certificate in the manner prescribed by 46859
division (C) of section 5733.42 of the Revised Code. Divisions (C) 46860
to (H) of that section govern the tax credit allowed by this 46861

section, except that "credit period" shall be substituted for "tax
year with respect to a calendar year" wherever that phrase appears
in those divisions and that a taxpayer under this section shall be
considered a taxpayer for the purposes of that section.

A taxpayer may carry forward the credit allowed under this
section to the extent that the credit exceeds the taxpayer's tax
due for the credit period. The taxpayer may carry the excess
credit forward for three credit periods following the credit
period for which the credit is first claimed under this section.
The credit allowed by this section is in addition to any credit
allowed under section 5729.031 of the Revised Code.

Sec. 5727.25. (A) Except as provided in division (B) of this
section, within forty-five days after the last day of March, June,
September, and December, each natural gas company or combined
company subject to the excise tax imposed by section 5727.24 of
the Revised Code shall file a return with the ~~treasurer of state~~
tax commissioner, in such form as the tax commissioner prescribes,
and pay the full amount of the tax due on its taxable gross
receipts for the preceding calendar quarter, except that the first
payment of this tax shall be made on or before November 15, 2000,
for the five-month period of May 1, 2000, to September 30, 2000.
All payments made under this division shall be made by electronic
funds transfer in accordance with section 5727.311 of the Revised
Code.

(B) Any natural gas company or combined company subject to
the excise tax imposed by this section that has an annual tax
liability for the preceding calendar year ending on the
thirty-first day of December of less than three hundred
twenty-five thousand dollars may elect to file an annual return
with the ~~treasurer of state~~ tax commissioner, in such form as the
tax commissioner prescribes, for the next year. A company that

elects to file an annual return for the calendar year shall file 46893
the return and remit the taxes due on its taxable gross receipts 46894
within forty-five days after the thirty-first day of December. The 46895
first payment of the tax under this division shall be made on or 46896
before February 14, 2001, for the period of May 1, 2000, to 46897
December 31, 2000. The minimum tax for a natural gas company or 46898
combined company subject to this division shall be fifty dollars, 46899
and the company shall not be required to remit the tax due by 46900
electronic funds transfer. 46901

(C) A return required to be filed under division (A) or (B) 46902
of this section shall show the amount of tax due from the company 46903
for the period covered by the return and any other information as 46904
prescribed by the tax commissioner. A return shall be considered 46905
filed when received by the ~~treasurer of state~~ tax commissioner. 46906
The commissioner may extend the time for making and filing returns 46907
and paying the tax. 46908

(D) Any natural gas company or combined company that fails to 46909
file a return or pay the full amount of the tax due within the 46910
period prescribed under this section shall pay an additional 46911
charge of fifty dollars or ten per cent of the tax required to be 46912
paid for the reporting period, whichever is greater. If any tax 46913
due is not paid timely in accordance with this section, the 46914
company liable for the tax shall pay interest, calculated at the 46915
rate per annum prescribed by section 5703.47 of the Revised Code, 46916
from the date the tax payment was due to the date of payment or to 46917
the date an assessment was issued, whichever occurs first. The tax 46918
commissioner may collect any additional charge or interest imposed 46919
by this section by assessment in the manner provided in section 46920
5727.26 of the Revised Code. The commissioner may abate all or a 46921
portion of the additional charge and may adopt rules governing 46922
such abatements. 46923

(E) The tax commissioner shall immediately forward to the 46924

treasurer of state any amounts that the commissioner receives 46925
under this section. The taxes, additional charges, penalties, and 46926
interest collected under sections 5727.24 to 5727.29 of the 46927
Revised Code shall be credited in accordance with section 5727.45 46928
of the Revised Code. 46929

Sec. 5727.26. (A) The tax commissioner may make an 46930
assessment, based on any information in the commissioner's 46931
possession, against any natural gas company or combined company 46932
that fails to file a return or pay any tax, interest, or 46933
additional charge as required by sections 5727.24 to 5727.29 of 46934
the Revised Code. The commissioner shall give the company assessed 46935
written notice of the assessment as provided in section 5703.37 of 46936
the Revised Code. A penalty of up to fifteen per cent may be added 46937
to all amounts assessed under this section. The tax commissioner 46938
may adopt rules providing for the imposition and remission of the 46939
penalty. 46940

(B) If a party to whom the notice of assessment is directed 46941
objects to the assessment, the party may file a petition for 46942
reassessment with the tax commissioner. The petition must be made 46943
in writing, signed by the party or the party's authorized agent 46944
having knowledge of the facts, and filed with the commissioner, 46945
either personally or by certified mail, within sixty days after 46946
service of the notice of assessment. The petition shall indicate 46947
the objections of the company assessed, but additional objections 46948
may be raised in writing if received prior to the date shown on 46949
the final determination of the commissioner. Upon receipt of a 46950
properly filed petition, the commissioner ~~shall~~ may notify the 46951
treasurer of state. 46952

Unless the petitioner waives a hearing, the commissioner 46953
shall grant the petitioner a hearing on the petition, assign a 46954
time and place for the hearing, and notify the petitioner of the 46955
time and place of the hearing as provided in section 5703.37 of 46956

the Revised Code. The commissioner may continue the hearing from
time to time, if necessary.

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If the party to whom the notice of assessment is directed
does not file a petition for reassessment, the assessment is final
and the amount of the assessment is due and payable from the
company assessed ~~to the treasurer of state. The company assessed~~
shall make the payment payable to the treasurer of state and shall
deliver the payment to the tax commissioner.

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(C) The tax commissioner may make any correction to the
assessment that the commissioner finds proper and shall issue a
final determination thereon. The commissioner shall serve a copy
of the final determination on the petitioner as provided in
section 5703.37 of the Revised Code, and the commissioner's
decision in the matter is final, subject to appeal under section
5717.02 of the Revised Code. The commissioner ~~also shall~~ may
transmit a copy of the final determination to the treasurer of
state. Only objections decided on the merits by the board of tax
appeals or a court shall be given collateral estoppel or res
judicata effect in considering an application for refund of an
amount paid pursuant to the assessment.

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(D) After an assessment becomes final, if any portion of the
assessment, including accrued interest, remains unpaid, a
certified copy of the tax commissioner's entry making the
assessment final may be filed in the office of the clerk of the
court of common pleas in the county in which the natural gas
company's or combined company's principal place of business is
located, or in the office of the clerk of court of common pleas of
Franklin county.

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The clerk, immediately on the filing of the entry, must enter
judgment for the state against the company assessed in the amount
shown on the entry. The judgment may be filed by the clerk in a
loose-leaf book entitled, "special judgments for the public

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utility excise tax on natural gas and combined companies," and 46989
shall have the same effect as other judgments. Execution shall 46990
issue upon the judgment at the request of the tax commissioner, 46991
and all laws applicable to sales on execution shall apply to sales 46992
made under the judgment. 46993

The portion of the assessment not paid within sixty days 46994
after the day the assessment was issued shall bear interest at the 46995
rate per annum prescribed by section 5703.47 of the Revised Code 46996
from the day the tax commissioner issues the assessment until it 46997
is paid. Interest shall be paid in the same manner as the tax and 46998
may be collected by the issuance of an assessment under this 46999
section. 47000

(E) If the tax commissioner believes that collection of the 47001
tax will be jeopardized unless proceedings to collect or secure 47002
collection of the tax are instituted without delay, the 47003
commissioner may issue a jeopardy assessment against the person 47004
liable for the tax. On issuance of the jeopardy assessment, the 47005
commissioner immediately shall file an entry with the clerk of the 47006
court of common pleas in the manner prescribed by division (D) of 47007
this section. Notice of the jeopardy assessment shall be served on 47008
the party assessed or the party's legal representative as provided 47009
in section 5703.37 of the Revised Code within five days of the 47010
filing of the entry with the clerk. The total amount assessed is 47011
immediately due and payable, unless the person assessed files a 47012
petition for reassessment in accordance with division (B) of this 47013
section and provides security in a form satisfactory to the 47014
commissioner and in an amount sufficient to satisfy the unpaid 47015
balance of the assessment. Full or partial payment of the 47016
assessment does not prejudice the commissioner's consideration of 47017
the petition for reassessment. 47018

(F) ~~All interest collected by the~~ The tax commissioner shall 47019
immediately forward to the treasurer of state all amounts that the 47020

~~tax commissioner receives~~ under this section ~~shall be paid to the~~ 47021
~~treasurer of state, and when paid such amounts~~ shall be considered 47022
revenue arising from the tax imposed by section 5727.24 of the 47023
Revised Code. 47024

(G) No assessment shall be made or issued against a natural 47025
gas company or combined company for the tax imposed by section 47026
5727.24 of the Revised Code more than four years after the return 47027
date for the period in which the tax was reported, or more than 47028
four years after the return for the period was filed, whichever is 47029
later. 47030

Sec. 5727.81. (A) For the purpose of raising revenue for 47031
public education and state and local government operations, an 47032
excise tax is hereby levied and imposed on an electric 47033
distribution company for all electricity distributed by such 47034
company beginning with the measurement period that includes May 1, 47035
2001, at the following rates per kilowatt hour of electricity 47036
distributed in a thirty-day period by the company through a meter 47037
of an end user in this state: 47038

KILOWATT HOURS DISTRIBUTED TO	RATE PER	
AN END USER	KILOWATT HOUR	
For the first 2,000	\$.00465	47041
For the next 2,001 to 15,000	\$.00419	47042
For 15,001 and above	\$.00363	47043

If no meter is used to measure the kilowatt hours of 47044
electricity distributed by the company, the rates shall apply to 47045
the estimated kilowatt hours of electricity distributed to an 47046
unmetered location in this state. 47047

The electric distribution company shall base the monthly tax 47048
on the kilowatt hours of electricity distributed to an end user 47049
through the meter of the end user that is not measured for a 47050
thirty-day period by dividing the days in the measurement period 47051

into the total kilowatt hours measured during the measurement
period to obtain a daily average usage. The tax shall be
determined by obtaining the sum of divisions (A)(1), (2), and (3)
of this section and multiplying that amount by the number of days
in the measurement period:

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(1) Multiplying \$0.00465 per kilowatt hour for the first
sixty-seven kilowatt hours distributed using a daily average;

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(2) Multiplying \$0.00419 for the next sixty-eight to five
hundred kilowatt hours distributed using a daily average;

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(3) Multiplying \$0.00363 for the remaining kilowatt hours
distributed using a daily average.

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~~Except~~ Until January 1, 2003, except as provided in division
(C) of this section, the electric distribution company shall pay
the tax to the treasurer of state in accordance with section
5727.82 of the Revised Code. Beginning January 1, 2003, except as
provided in division (C) of this section, the electric
distribution company shall pay the tax to the tax commissioner in
accordance with section 5727.82 of the Revised Code, unless
required to remit each tax payment by electronic funds transfer to
the treasurer of state in accordance with section 5727.83 of the
Revised Code.

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Only the distribution of electricity through a meter of an
end user in this state shall be used by the electric distribution
company to compute the amount or estimated amount of tax due. In
the event a meter is not actually read for a measurement period,
the estimated kilowatt hours distributed by an electric
distribution company to bill for its distribution charges shall be
used.

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(B) Except as provided in division (C) of this section, each
electric distribution company shall pay the tax imposed by this
section in all of the following circumstances:

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(1) The electricity is distributed by the company through a meter of an end user in this state; 47083
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(2) The company is distributing electricity through a meter located in another state, but the electricity is consumed in this state in the manner prescribed by the tax commissioner; 47085
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(3) The company is distributing electricity in this state without the use of a meter, but the electricity is consumed in this state as estimated and in the manner prescribed by the tax commissioner. 47088
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(C)(1) As used in division (C) of this section: 47092

(a) "Total price of electricity" means the aggregate value in money of anything paid or transferred, or promised to be paid or transferred, to obtain electricity or electric service, including but not limited to the value paid or promised to be paid for the transmission or distribution of electricity and for transition costs as described in Chapter 4928. of the Revised Code. 47093
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(b) "Package" means the provision or the acquisition, at a combined price, of electricity with other services or products, or any combination thereof, such as natural gas or other fuels; energy management products, software, and services; machinery and equipment acquisition; and financing agreements. 47099
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(c) "Single location" means a facility located on contiguous property separated only by a roadway, railway, or waterway. 47104
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(2) Division (C) of this section applies to any commercial or industrial purchaser's receipt of electricity through a meter of an end user in this state or through more than one meter at a single location in this state in a quantity that exceeds forty-five million kilowatt hours of electricity over the course of the preceding calendar year, or any commercial or industrial purchaser that will consume more than forty-five million kilowatt hours of electricity over the course of the succeeding twelve 47106
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months as estimated by the tax commissioner. The tax commissioner 47114
shall make such an estimate upon the written request by an 47115
applicant for registration as a self-assessing purchaser under 47116
this division. Such a purchaser may elect to self-assess the 47117
excise tax imposed by this section at the rate of \$.00075 per 47118
kilowatt hour on ~~not more than~~ the first five hundred four million 47119
kilowatt hours distributed to that meter or location during the 47120
registration year, and four per cent of the total price of all 47121
electricity distributed to that meter or location. A qualified end 47122
user that receives electricity through a meter of an end user in 47123
this state or through more than one meter at a single location in 47124
this state and that consumes, over the course of the previous 47125
calendar year, more than forty-five million kilowatt hours in 47126
other than its qualifying manufacturing process, may elect to 47127
self-assess the tax as allowed by this division with respect to 47128
the electricity used in other than its qualifying manufacturing 47129
process. ~~Payment~~ Until January 1, 2003, payment of the tax shall 47130
be made directly to the treasurer of state in accordance with 47131
divisions (A)(4) and (5) of section 5727.82 of the Revised Code. 47132
Beginning January 1, 2003, payment of the tax shall be made 47133
directly to the tax commissioner in accordance with divisions 47134
(A)(4) and (5) of section 5727.82 of the Revised Code, or the 47135
treasurer of state in accordance with section 5727.83 of the 47136
Revised Code. If the electric distribution company serving the 47137
self-assessing purchaser is a municipal electric utility and the 47138
purchaser is within the municipal corporation's corporate limits, 47139
payment shall be made to such municipal corporation's general fund 47140
and reports shall be filed in accordance with divisions (A)(4) and 47141
(5) of section 5727.82 of the Revised Code, except that "municipal 47142
corporation" shall be substituted for "treasurer of state" and 47143
"tax commissioner." A self-assessing purchaser that pays the 47144
excise tax as provided in this division shall not be required to 47145
pay the tax to the electric distribution company from which its 47146

electricity is distributed. If a self-assessing purchaser's receipt of electricity is not subject to the tax as measured under this division, the tax on the receipt of such electricity shall be measured and paid as provided in division (A) of this section.

(3) In the case of the acquisition of a package, unless the elements of the package are separately stated isolating the total price of electricity from the price of the remaining elements of the package, the tax imposed under this section applies to the entire price of the package. If the elements of the package are separately stated, the tax imposed under this section applies to the total price of the electricity.

(4) Any electric supplier that sells electricity as part of a package shall separately state to the purchaser the total price of the electricity and, upon request by the tax commissioner, the total price of each of the other elements of the package.

(5) The tax commissioner may adopt rules relating to the computation of the total price of electricity with respect to self-assessing purchasers, which may include rules to establish the total price of electricity purchased as part of a package.

(6) ~~Application~~ An annual application for registration as a self-assessing purchaser shall be made for each qualifying meter or location, on a form prescribed by the tax commissioner. The registration year begins on the first day of May and ends on the following thirtieth day of April. Persons may apply after the first day of May for the remainder of the registration year. In the case of an applicant applying on the basis of an estimated consumption of forty-five million kilowatt hours over the course of the succeeding twelve months, the applicant shall provide such information as the tax commissioner considers to be necessary to estimate such consumption. At the time of making the application and by the first day of May of each year, excluding May 1, 2000, a

self-assessing purchaser shall pay a fee of five hundred dollars 47179
to the tax commissioner, or to the treasurer of state as provided 47180
in section 5727.83 of the Revised Code, for each qualifying meter 47181
or location. The tax commissioner shall immediately pay to the 47182
treasurer of state all amounts that the tax commissioner receives 47183
under this section. The treasurer of state shall deposit such ~~fees~~ 47184
amounts into the kilowatt hour excise tax administration fund, 47185
which is hereby created in the state treasury. Money in the fund 47186
shall be used to defray the tax commissioner's cost in 47187
administering the tax owed under section 5727.81 of the Revised 47188
Code by self-assessing purchasers. After the application is 47189
approved by the tax commissioner, the registration shall remain in 47190
effect for the current registration year, or until canceled by the 47191
registrant upon written notification to the commissioner of the 47192
election to pay the tax in accordance with division (A) of this 47193
section, or until canceled by the tax commissioner for not paying 47194
the tax or fee under division (C) of this section, or for not 47195
meeting the qualifications in division (C)(2) of this section. The 47196
tax commissioner shall give written notice to the electric 47197
distribution company from which electricity is delivered to a 47198
self-assessing purchaser of the purchaser's self-assessing status, 47199
and the electric distribution company is relieved of the 47200
obligation to pay the tax imposed by division (A) of this section 47201
for electricity distributed to that self-assessing purchaser until 47202
it is notified by the tax commissioner that the self-assessing 47203
purchaser's registration is canceled. Within fifteen days of 47204
notification of the canceled registration, the electric 47205
distribution company shall be responsible for payment of the tax 47206
imposed by division (A) of this section on electricity distributed 47207
to a purchaser that is no longer registered as a self-assessing 47208
purchaser. A self-assessing purchaser with a canceled registration 47209
must file a report and remit the tax imposed by division (A) of 47210
this section on all electricity it receives for any measurement 47211

period prior to the tax being reported and paid by the electric 47212
distribution company. A self-assessing purchaser whose 47213
registration is canceled by the tax commissioner is not eligible 47214
to register as a self-assessing purchaser for two years after the 47215
registration is canceled. 47216

(7) If the tax commissioner cancels the self-assessing 47217
registration of a purchaser registered on the basis of its 47218
estimated consumption because the purchaser does not consume at 47219
least forty-five million kilowatt hours of electricity over the 47220
course of the twelve-month period for which the estimate was made, 47221
the tax commissioner shall assess and collect from the purchaser 47222
the difference between (a) the amount of tax that would have been 47223
payable under division (A) of this section on the electricity 47224
distributed to the purchaser during that period and (b) the amount 47225
of tax paid by the purchaser on such electricity pursuant to 47226
division (C)(2)(a) of this section. The assessment shall be paid 47227
within sixty days after the tax commissioner issues it, regardless 47228
of whether the purchaser files a petition for reassessment under 47229
section 5727.89 of the Revised Code covering that period. If the 47230
purchaser does not pay the assessment within the time prescribed, 47231
the amount assessed is subject to the additional charge and the 47232
interest prescribed by divisions (B) and (C) of section 5727.82 of 47233
the Revised Code, and is subject to assessment under section 47234
5727.89 of the Revised Code. If the purchaser is a qualified end 47235
user, division (C)(7) of this section applies only to electricity 47236
it consumes in other than its qualifying manufacturing process. 47237

(D) The tax imposed by this section does not apply to the 47238
distribution of any kilowatt hours of electricity to the federal 47239
government, to an end user located at a federal facility that uses 47240
electricity for the enrichment of uranium, to a qualified 47241
regeneration meter, or to an end user for any day the end user is 47242
a qualified end user. The exemption under this division for a 47243

qualified end user only applies to the manufacturing location 47244
where the qualified end user uses more than three million kilowatt 47245
hours per day in a qualifying manufacturing process. 47246

Sec. 5727.811. (A) For the purpose of raising revenue for 47247
public education and state and local government operations, an 47248
excise tax is hereby levied on every natural gas distribution 47249
company for all natural gas volumes billed by, or on behalf of, 47250
the company ~~on and after~~ beginning with the measurement period 47251
that includes July 1, 2001. Except as provided in divisions (C) or 47252
(D) of this section, the tax shall be levied at the following 47253
rates per MCF of natural gas distributed by the company through a 47254
meter of an end user in this state: 47255

MCF DISTRIBUTED TO AN END USER	RATE PER MCF	
For the first 100 MCF per month	\$.1593	47256
For the next 101 to 2000 MCF per month	\$.0877	47257
For 2001 and above MCF per month	\$.0411	47258

If no meter is used to measure the MCF of natural gas 47260
distributed by the company, the rates shall apply to the estimated 47261
MCF of natural gas distributed to an unmetered location in this 47262
state. 47263

(B) A natural gas distribution company shall base the tax on 47264
the MCF of natural gas distributed to an end user through the 47265
meter of the end user in this state that is estimated to be 47266
consumed by the end user as reflected on the end user's customer 47267
statement from the natural gas distribution company. ~~The~~ Until 47268
January 1, 2003, the natural gas distribution company shall pay 47269
the tax levied by this section to the treasurer of state in 47270
accordance with section 5727.82 of the Revised Code. Beginning 47271
January 1, 2003, the natural gas distribution company shall pay 47272
the tax levied by this section to the tax commissioner in 47273
accordance with section 5727.82 of the Revised Code unless 47274

required to remit payment to the treasurer of state in accordance 47275
with section 5727.83 of the Revised Code. 47276

(C) A natural gas distribution company with fifty thousand 47277
customers or less may elect to apply the rates specified in 47278
division (A) of this section to the aggregate of the natural gas 47279
distributed by the company through the meter of all its customers 47280
in this state, and upon such election, this method shall be used 47281
to determine the amount of tax to be paid by such company. 47282

(D) A natural gas distribution company shall pay the tax 47283
imposed by this section at the rate of \$.02 per MCF of natural gas 47284
distributed by the company through the meter of a flex customer. 47285
The natural gas distribution company correspondingly shall reduce 47286
the per MCF rate that it charges the flex customer for natural gas 47287
distribution services by \$.02 per MCF of natural gas distributed 47288
to the flex customer. 47289

(E) Except as provided in division (F) of this section, each 47290
natural gas distribution company shall pay the tax imposed by this 47291
section in all of the following circumstances: 47292

(1) The natural gas is distributed by the company through a 47293
meter of an end user in this state; 47294

(2) The natural gas distribution company is distributing 47295
natural gas through a meter located in another state, but the 47296
natural gas is consumed in this state in the manner prescribed by 47297
the tax commissioner; 47298

(3) The natural gas distribution company is distributing 47299
natural gas in this state without the use of a meter, but the 47300
natural gas is consumed in this state as estimated and in the 47301
manner prescribed by the tax commissioner. 47302

(F) The tax levied by this section does not apply to the 47303
distribution of natural gas to the federal government, or natural 47304
gas produced by an end user in this state that is consumed by that 47305

end user or its affiliates and is not distributed through the 47306
facilities of a natural gas company. 47307

Sec. 5727.82. (A)(1) Except as provided in divisions (A)(3) 47308
and (D) of this section, by the twentieth day of each month, each 47309
electric distribution company required to pay the tax imposed by 47310
section 5727.81 of the Revised Code shall file with the ~~treasurer~~ 47311
~~of state tax commissioner~~ a return as prescribed by the tax 47312
commissioner and shall make payment of the full amount of tax due 47313
for the preceding month. The first payment of this tax shall be 47314
made on or before June 20, 2001. The electric distribution company 47315
shall make payment to the tax commissioner unless required to 47316
remit each tax payment by electronic funds transfer to the 47317
treasurer of state as provided in section 5727.83 of the Revised 47318
Code. 47319

(2) By the twentieth day of May, August, November, and 47320
February, each natural gas distribution company required to pay 47321
the tax imposed by section 5727.811 of the Revised Code shall file 47322
with the ~~treasurer of state tax commissioner~~ a return as 47323
prescribed by the tax commissioner and shall make payment to the 47324
tax commissioner, or to the treasurer of state as provided in 47325
section 5727.83 of the Revised Code, of the full amount of tax due 47326
for the preceding quarter. The first payment of this tax shall be 47327
made on or before November 20, 2001, for the quarter ending 47328
September 30, 2001. 47329

(3) If the electric distribution company required to pay the 47330
tax imposed by section 5727.81 of the Revised Code is a municipal 47331
electric utility, it may retain in its general fund that portion 47332
of the tax on the kilowatt hours distributed to end users located 47333
within the boundaries of the municipal corporation. However, the 47334
municipal electric utility shall make payment in accordance with 47335
division (A)(1) of this section of the tax due on the kilowatt 47336

hours distributed to end users located outside the boundaries of 47337
the municipal corporation. 47338

(4) By the twentieth day of each month, each self-assessing 47339
purchaser that under division (C) of section 5727.81 of the 47340
Revised Code pays directly to the tax commissioner or the 47341
treasurer of state the tax imposed by section 5727.81 of the 47342
Revised Code shall file with the ~~treasurer of state~~ tax 47343
commissioner a return as prescribed by the tax commissioner and 47344
shall make payment of the full amount of the tax due for the 47345
preceding month. 47346

(5) As prescribed by the tax commissioner, a return shall be 47347
signed by the company or self-assessing purchaser required to file 47348
it, or an authorized employee, officer, or agent of the company or 47349
purchaser. ~~The treasurer of state shall mark on the return the~~ 47350
~~date it was received and indicate payment or nonpayment of the tax~~ 47351
~~shown to be due on the return. The treasurer of state immediately~~ 47352
~~shall transmit all returns to the tax commissioner.~~ The return 47353
shall be deemed filed when received by the ~~treasurer of state~~ tax 47354
commissioner. 47355

(B) Any natural gas distribution company, electric 47356
distribution company, or self-assessing purchaser required by this 47357
section to file a return who fails to file it and pay the tax 47358
within the period prescribed shall pay an additional charge of 47359
fifty dollars or ten per cent of the tax required to be paid for 47360
the reporting period, whichever is greater. The tax commissioner 47361
may collect the additional charge by assessment pursuant to 47362
section 5727.89 of the Revised Code. The commissioner may abate 47363
all or a portion of the additional charge and may adopt rules 47364
governing such abatements. 47365

(C) If any tax due is not paid timely in accordance with this 47366
section, the natural gas distribution company, electric 47367
distribution company, or self-assessing purchaser liable for the 47368

tax shall pay interest, calculated at the rate per annum 47369
prescribed by section 5703.47 of the Revised Code, from the date 47370
the tax payment was due to the date of payment or to the date an 47371
assessment is issued, whichever occurs first. Interest shall be 47372
paid in the same manner as the tax, and the commissioner may 47373
collect the interest by assessment pursuant to section 5727.89 of 47374
the Revised Code. 47375

(D) Not later than the tenth day of each month, a qualified 47376
end user not making the election to self-assess under division (C) 47377
of section 5727.81 of the Revised Code shall report in writing to 47378
the electric distribution company that distributes electricity to 47379
the end user the kilowatt hours that were consumed as a qualified 47380
end user in a qualifying manufacturing process for the prior month 47381
and the number of days, if any, on which the end user was not a 47382
qualified end user. For each calendar day during that month, a 47383
qualified end user shall report the kilowatt hours that were not 47384
used in a qualifying manufacturing process. For each calendar day 47385
the end user was not a qualified end user, the end user shall 47386
report in writing to the electric distribution company the total 47387
number of kilowatt hours used on that day, and the electric 47388
distribution company shall pay the tax imposed under section 47389
5727.81 of the Revised Code on each kilowatt hour that was not 47390
distributed to a qualified end user in a qualifying manufacturing 47391
process. The electric distribution company may rely in good faith 47392
on a qualified end user's report filed under this division. If it 47393
is determined that the end user was not a qualified end user for 47394
any calendar day or the quantity of electricity used by the 47395
qualified end user in a qualifying manufacturing process was 47396
overstated, the tax commissioner shall assess and collect any tax 47397
imposed under section 5727.81 of the Revised Code directly from 47398
the qualified end user. As requested by the commissioner, each end 47399
user reporting to an electric distribution company that it is a 47400

qualified end user shall provide documentation to the commissioner 47401
that establishes the volume of electricity consumed daily by the 47402
qualified end user and the total number of kilowatt hours consumed 47403
in a qualifying manufacturing process. 47404

(E) The tax commissioner shall immediately pay to the 47405
treasurer of state all amounts that the tax commissioner receives 47406
under this section. The treasurer of state shall credit such 47407
amounts in accordance with this chapter. 47408

Sec. 5727.84. (A) As used in this section and sections 47409
5727.85, 5727.86, and 5727.87 of the Revised Code: 47410

(1) "School district" means a city, local, or exempted 47411
village school district. 47412

(2) "Joint vocational school district" means a joint 47413
vocational school district created under section 3311.16 of the 47414
Revised Code, and includes a cooperative education school district 47415
created under section 3311.52 or 3311.521 of the Revised Code and 47416
a county school financing district created under section 3311.50 47417
of the Revised Code. 47418

(3) "Local taxing unit" means a subdivision or taxing unit, 47419
as defined in section 5705.01 of the Revised Code, a park district 47420
created under Chapter 1545. of the Revised Code, or a township 47421
park district established under section 511.23 of the Revised 47422
Code, but excludes school districts and joint vocational school 47423
districts. 47424

(4) "State education aid" means the sum of ~~the state basic~~ 47425
~~aid and state special education~~ aid amounts computed for a school 47426
district or joint vocational school district under ~~divisions (A)~~ 47427
~~and (C) of section 3317.022 Chapter 3317.~~ of the Revised Code. 47428

(5) "State education aid offset" means the amount ~~certified~~ 47429
determined for each school district or joint vocational school 47430

<u>district</u> under division (A)(1) of section 5727.85 of the Revised Code.	47431 47432
(6) " Adjusted total taxable value <u>Recognized valuation</u> " has the same meaning as in section 3317.02 of the Revised Code.	47433 47434
(7) "Electric company tax value loss" means the amount determined under division (D) of this section.	47435 47436
(8) "Natural gas company tax value loss" means the amount determined under division (E) of this section.	47437 47438
(9) "Tax value loss" means the sum of the electric company tax value loss and the natural gas company tax value loss.	47439 47440
(10) "Fixed-rate levy" means any tax levied on property other than a fixed-sum levy.	47441 47442
(11) "Fixed-rate levy loss" means the amount determined under division (G) of this section.	47443 47444
(12) "Fixed-sum levy" means a tax levied on property at whatever rate is required to produce a specified amount of tax money or <u>levied in excess of the ten-mill limitation</u> to pay debt charges, and includes school district emergency levies imposed pursuant to section 5705.194 of the Revised Code.	47445 47446 47447 47448 47449
(13) "Fixed-sum levy loss" means the amount determined under division (H) of this section.	47450 47451
(14) "Consumer price index" means the consumer price index (all items, all urban consumers) prepared by the bureau of labor statistics of the United States department of labor.	47452 47453 47454
(B) All <u>The kilowatt-hour tax receipts fund is hereby created in the state treasury and shall consist of</u> money arising from the tax imposed by section 5727.81 of the Revised Code. <u>All money in the kilowatt-hour tax receipts fund</u> shall be credited as follows:	47455 47456 47457 47458
(1) Fifty-nine and nine hundred seventy-six one-thousandths per cent, plus an amount equal to seventy per cent of the total	47459 47460

~~state education aid offset~~, shall be credited to the general 47461
revenue fund. 47462

(2) Two and six hundred forty-six one-thousandths per cent 47463
shall be credited to the local government fund, for distribution 47464
in accordance with section 5747.50 of the Revised Code. 47465

(3) Three hundred seventy-eight one-thousandths per cent 47466
shall be credited to the local government revenue assistance fund, 47467
for distribution in accordance with section 5747.61 of the Revised 47468
Code. 47469

(4) Twenty-five and nine-tenths per cent, ~~less an amount~~ 47470
~~equal to seventy per cent of the total state education aid offset,~~ 47471
shall be credited to the school district property tax replacement 47472
fund, which is hereby created in the state treasury for the 47473
purpose of making the payments described in section 5727.85 of the 47474
Revised Code. 47475

(5) Eleven and one-tenth per cent shall be credited to the 47476
local government property tax replacement fund, which is hereby 47477
created in the state treasury for the purpose of making the 47478
payments described in section 5727.86 of the Revised Code. 47479

(6) ~~Beginning in the fiscal year in which payments are~~ 47480
~~required to be made under sections 5727.85 and 5727.86 of the~~ 47481
~~Revised Code~~ In fiscal years 2002, 2003, 2004, 2005, and 2006, if 47482
the revenue arising from the tax levied by section 5727.81 of the 47483
Revised Code is less than five hundred fifty-two million dollars, 47484
the amount credited to the general revenue fund under division 47485
(B)(1) of this section shall be reduced by the amount necessary to 47486
credit to each of the funds in divisions (B)(2), and (3), ~~(4)~~, and 47487
~~(5)~~ of this section the amount it would have received if the tax 47488
did raise five hundred fifty-two million dollars for that fiscal 47489
year. The tax commissioner shall certify to the director of budget 47490
and management the amounts that shall be credited under this 47491
division. 47492

(7) Beginning in fiscal year 2007, if the revenue arising from the tax levied by section 5727.81 of the Revised Code is less than five hundred fifty-two million dollars, the amount credited to the general revenue fund under division (B)(1) of this section shall be reduced by the amount necessary to credit to each of the funds in divisions (B)(2), (3), (4), and (5) of this section the amount that it would have received if the tax did raise five hundred fifty-two million dollars for that fiscal year. The tax commissioner shall certify to the director of budget and management the amounts to be credited under division (B)(7) of this section.

(C) All The natural gas tax receipts fund is hereby created in the state treasury and shall consist of money arising from the tax imposed by section 5727.811 of the Revised Code. All money in the fund shall be credited as follows:

~~(1) Seventy per cent, less an amount equal to thirty per cent of the total state education aid offset,~~ shall be credited to the school district property tax replacement fund for the purpose of making the payments described in section 5727.85 of the Revised Code.

(2) Thirty per cent shall be credited to the local government property tax replacement fund for the purpose of making the payments described in section 5727.86 of the Revised Code.

~~(3) An amount equal to thirty per cent of the total state education aid offset shall be credited to the general revenue fund.~~

~~(4) Beginning in the fiscal year in which payments are required to be made under sections 5727.85 and 5727.86 of the Revised Code 2007,~~ if the revenue arising from the tax levied by section 5727.811 of the Revised Code is less than ninety million dollars, the an amount credited to equal to the difference between

~~the amount collected and ninety million dollars shall be~~ 47524
~~transferred from the general revenue fund under division (C)(3) of~~ 47525
~~this section shall be reduced by the amount necessary to credit to~~ 47526
each of the funds in divisions (C)(1) and (2) of this section ~~the~~ 47527
~~amount that it would have received if the tax did raise ninety~~ 47528
~~million dollars for that fiscal year in the same percentages as if~~ 47529
~~that amount had been collected as taxes under section 5727.811 of~~ 47530
the Revised Code. The tax commissioner shall certify to the 47531
director of budget and management the amounts that shall be 47532
~~credited~~ transferred under this division. 47533

(D) Not later than January 1, 2002, the tax commissioner 47534
shall determine for each taxing district its electric company tax 47535
value loss, which is the sum of the amounts described in divisions 47536
(D)(1) and (2) of this section: 47537

(1) The difference obtained by subtracting the amount 47538
described in division (D)(1)(b) from the amount described in 47539
division (D)(1)(a) of this section. 47540

(a) The value of electric company and rural electric company 47541
tangible personal property as assessed by the tax commissioner for 47542
tax year 1998 on a preliminary assessment, or an amended 47543
preliminary assessment if issued prior to March 1, 1999, and as 47544
apportioned to the taxing district for tax year 1998; 47545

(b) The value of electric company and rural electric company 47546
tangible personal property as assessed by the tax commissioner for 47547
tax year 1998 had the property been apportioned to the taxing 47548
district for tax year 2001, and assessed at the rates in effect 47549
for tax year 2001. 47550

(2) The difference obtained by subtracting the amount 47551
described in division (D)(2)(b) from the amount described in 47552
division (D)(2)(a) of this section. 47553

(a) The three-year average for tax years 1996, 1997, and 1998 47554

of the assessed value from nuclear fuel materials and assemblies 47555
assessed against a person under Chapter 5711. of the Revised Code 47556
from the leasing of them to an electric company for those 47557
respective tax years, as reflected in the preliminary assessments; 47558
47559

(b) The three-year average assessed value from nuclear fuel 47560
materials and assemblies assessed under division (D)(2)(a) of this 47561
section for tax years 1996, 1997, and 1998, as reflected in the 47562
preliminary assessments, using an assessment rate of twenty-five 47563
per cent. 47564

(E) Not later than January 1, 2002, the tax commissioner 47565
shall determine for each taxing district its natural gas company 47566
tax value loss, which is the sum of the amounts described in 47567
divisions (E)(1) and (2) of this section: 47568

(1) The difference obtained by subtracting the amount 47569
described in division (E)(1)(b) from the amount described in 47570
division (E)(1)(a) of this section. 47571

(a) The value of all natural gas company tangible personal 47572
property, other than property described in division (E)(2) of this 47573
section, as assessed by the tax commissioner for tax year 1999 on 47574
a preliminary assessment, or an amended preliminary assessment if 47575
issued prior to March 1, 2000, and apportioned to the taxing 47576
district for tax year 1999; 47577

(b) The value of all natural gas company tangible personal 47578
property, other than property described in division (E)(2) of this 47579
section, as assessed by the tax commissioner for tax year 1999 had 47580
the property been apportioned to the taxing district for tax year 47581
2001, and assessed at the rates in effect for tax year 2001. 47582

(2) The difference in the value of current gas obtained by 47583
subtracting the amount described in division (E)(2)(b) from the 47584
amount described in division (E)(2)(a) of this section. 47585

(a) The three-year average assessed value of current gas as 47586
assessed by the tax commissioner for tax years 1997, 1998, and 47587
1999 on a preliminary assessment, or an amended preliminary 47588
assessment if issued prior to March 1, 2001, and as apportioned in 47589
the taxing district for those respective years; 47590

(b) The three-year average assessed value from current gas 47591
under division (E)(2)(a) of this section for tax years 1997, 1998, 47592
and 1999, as reflected in the preliminary assessment, using an 47593
assessment rate of twenty-five per cent. 47594

(F) The tax commissioner may request that natural gas 47595
companies, electric companies, and rural electric companies file a 47596
report to help determine the tax value loss under divisions (D) 47597
and (E) of this section. The report shall be filed within thirty 47598
days of the commissioner's request. A company that fails to file 47599
the report or does not timely file the report is subject to the 47600
penalty in section 5727.60 of the Revised Code. 47601

(G) Not later than January 1, 2002, the tax commissioner 47602
shall determine for each school district, joint vocational school 47603
district, and local taxing unit its fixed-rate levy loss, which is 47604
the sum of its electric company tax value loss multiplied by the 47605
tax rate in effect in tax year 1998 for fixed-rate levies and its 47606
natural gas company tax value loss multiplied by the tax rate in 47607
effect in tax year 1999 for fixed-rate levies. 47608

(H) Not later than January 1, 2002, the tax commissioner 47609
shall determine for each school district, joint vocational school 47610
district, and local taxing unit its fixed-sum levy loss, which is 47611
the amount obtained by subtracting the amount described in 47612
division (H)(2) of this section from the amount described in 47613
division (H)(1) of this section: 47614

(1) The sum of the electric company tax value loss multiplied 47615
by the tax rate in effect in tax year 1998, and the natural gas 47616

company tax value loss multiplied by the tax rate in effect in tax 47617
year 1999, for fixed-sum levies for all taxing districts within 47618
each school district, joint vocational school district, and local 47619
taxing unit. For the years 2002 through 2006, this computation 47620
shall include school district emergency levies that existed in 47621
1998 in the case of the electric company tax value loss, and 1999 47622
in the case of the natural gas company tax value loss, and all 47623
other fixed-sum levies that existed in 1998 in the case of the 47624
electric company tax value loss and 1999 in the case of the 47625
natural gas company tax value loss and continue to be charged in 47626
the tax year preceding the distribution year. For the years 2007 47627
through 2016 in the case of school district emergency levies, and 47628
for all years after 2006 in the case of all other fixed-sum 47629
levies, this computation shall exclude all fixed-sum levies that 47630
existed in 1998 in the case of the electric company tax value loss 47631
and 1999 in the case of the natural gas company tax value loss, 47632
but are no longer in effect in the tax year preceding the 47633
distribution year. For the purposes of this section, an emergency 47634
levy that existed in 1998 in the case of the electric company tax 47635
value loss, and 1999 in the case of the natural gas company tax 47636
value loss, continues to exist in a year beginning on or after 47637
January 1, 2007, but before January 1, 2017, if, in that year, the 47638
board of education levies a school district emergency levy for an 47639
annual sum at least equal to the annual sum levied by the board in 47640
tax year 1998 or 1999, respectively, less the amount of the 47641
payment certified under this division for 2002. 47642

(2) ~~The total taxable value in tax year 1998 in the case of~~ 47643
~~the electric company tax value loss and 1999 in the case of the~~ 47644
~~natural gas company 1999 less the~~ tax value loss in each school 47645
district, joint vocational school district, and local taxing unit 47646
multiplied by one-fourth of one mill. 47647

If the amount computed under division (H) of this section for 47648

any school district, joint vocational school district, or local 47649
taxing unit is greater than zero, that amount shall equal the 47650
fixed-sum levy loss reimbursed pursuant to division (E) of section 47651
5727.85 of the Revised Code or division (A)(2) of section 5727.86 47652
of the Revised Code, and the one-fourth of one mill that is 47653
subtracted under division (H)(2) of this section shall be 47654
apportioned among all contributing fixed-sum levies in the 47655
proportion of each levy to the sum of all fixed-sum levies within 47656
each school district, joint vocational school district, or local 47657
taxing unit. 47658

(I) Notwithstanding divisions (D), (E), (G), and (H) of this 47659
section, in computing the tax value loss, fixed-rate levy loss, 47660
and fixed-sum levy loss, the tax commissioner shall use the 47661
greater of the 1998 tax rate or the 1999 tax rate in the case of 47662
levy losses associated with the electric company tax value loss, 47663
but the 1999 tax rate shall not include for this purpose any tax 47664
levy approved by the voters after June 30, 1999, and the tax 47665
commissioner shall use the greater of the 1999 or the 2000 tax 47666
rate in the case of levy losses associated with the natural gas 47667
company tax value loss, ~~but the 2000 tax rate shall not include~~ 47668
~~for this purpose any tax levy approved by the voters after~~ 47669
~~November 7, 2000.~~ 47670

(J) Not later than January 1, 2002, the tax commissioner 47671
shall certify to the department of education the tax value loss 47672
determined under divisions (D) and (E) of this section for each 47673
taxing district, the fixed-rate levy loss calculated under 47674
division (G) of this section, and the fixed-sum levy loss 47675
calculated under division (H) of this section. The calculations 47676
under divisions (G) and (H) of this section shall separately 47677
display the levy loss for each levy eligible for reimbursement. 47678

(K) Not later than September 1, 2001, the tax commissioner 47679
shall certify the amount of the fixed-sum levy loss to the county 47680

auditor of each county in which a school district with a fixed-sum 47681
levy loss has territory. 47682

Sec. 5727.85. (A) By the thirty-first day of July of each 47683
year, beginning in 2002 and ending in 2016, the department of 47684
education shall determine the following for each school district 47685
and each joint vocational school district eligible for payment 47686
under division (C) or (D) of this section: 47687

(1) The state education aid offset, which is the difference 47688
obtained by subtracting the amount described in division (A)(1)(b) 47689
of this section from the amount described in division (A)(1)(a) of 47690
this section: 47691

(a) The state education aid computed for the school district 47692
or joint vocational school district for the current fiscal year ~~on~~ 47693
~~the basis of the adjusted total taxable value~~ as of the 47694
thirty-first day of July; 47695

(b) The state education aid that would be computed for the 47696
school district or joint vocational school district for the 47697
current fiscal year as of the thirty-first day of July if the 47698
~~district's adjusted total taxable value~~ recognized valuation 47699
included the tax value loss for ~~all taxing districts~~ in the school 47700
district or joint vocational school district. 47701

(2) The greater of zero or difference obtained by subtracting 47702
the state education aid offset determined under division (A)(1) of 47703
this section from the fixed-rate levy loss ~~determined~~ certified 47704
under division ~~(G)~~ (J) of section 5727.84 of the Revised Code for 47705
all taxing districts in each school district and joint vocational 47706
school district. ~~The~~ 47707

By the fifth day of August of each such year, the department 47708
of education shall certify the amount so determined under division 47709
(A)(1) of this section to the director of budget and management. 47710

(B) Not later than the thirty-first day of October of the 47711
years 2006 through 2016, the department of education shall 47712
determine all of the following for each school district: 47713

(1) The amount obtained by subtracting the district's state 47714
education aid computed for fiscal year 2002 from the district's 47715
state education aid computed for the current fiscal year; 47716

(2) The inflation-adjusted property tax loss. The 47717
inflation-adjusted property tax loss equals the fixed-rate levy 47718
loss, excluding the tax loss from levies within the ten-mill 47719
limitation to pay debt charges, determined under division (G) of 47720
section 5727.84 of the Revised Code for all taxing districts in 47721
each school district plus the product obtained by multiplying that 47722
loss by the cumulative percentage increase in the consumer price 47723
index from January 1, 2002, to the thirtieth day of June of the 47724
current year. 47725

(3) The difference obtained by subtracting the amount 47726
computed under division (B)(1) from the amount of the 47727
inflation-adjusted property tax loss. If this difference is zero 47728
or a negative number, no further payments shall be made under 47729
division (C) of this section to the school district from the 47730
school district property tax replacement fund. ~~If the difference~~ 47731
~~is greater than zero, the department of education shall certify~~ 47732
~~the amount calculated in division (A)(2) of this section to the~~ 47733
~~director of budget and management not later than the thirty-first~~ 47734
~~day of December of each year, beginning in 2006 and ending in~~ 47735
~~2016.~~ 47736

(C) ~~For all taxing districts in each school district, the~~ 47737
~~director of budget and management~~ The department of education 47738
shall pay from the school district property tax replacement fund 47739
to ~~the county undivided income tax fund in the proper county~~ 47740
~~treasury~~ each school district all of the following: 47741

(1) In February 2002, one-half of the fixed-rate levy loss 47742
certified under division ~~(G)~~(J) of section 5727.84 of the Revised 47743
Code ~~on or before the day prescribed for the settlement under~~ 47744
~~division (A) of section 321.24 of the Revised Code~~ between the 47745
twenty-first and twenty-eighth days of February. 47746

(2) From August 2002 through August 2006, one-half of the 47747
amount ~~certified~~ calculated for that fiscal year under division 47748
(A)(2) of this section ~~on or before each of the days prescribed~~ 47749
~~for the settlements under divisions (A) and (C) of section 321.24~~ 47750
~~of the Revised Code~~ between the twenty-first and twenty-eighth 47751
days of August and of February. 47752

(3) From February 2007 through August 2016, one-half of the 47753
amount ~~certified~~ calculated for that calendar year under division 47754
(B)(3) of this section ~~on or before each of the days prescribed~~ 47755
~~for the settlements under divisions (A) and (C) of section 321.24~~ 47756
~~of the Revised Code.~~ 47757

~~The county treasurer shall distribute amounts paid under~~ 47758
~~divisions (C)(1), (2), and (3) of this section to the proper~~ 47759
~~school district as if they had been levied and collected as taxes,~~ 47760
~~and the school district shall apportion the amounts so received~~ 47761
~~among its funds in the same proportions as if those amounts had~~ 47762
~~been levied and collected as taxes~~ between the twenty-first and 47763
twenty-eighth days of August and of February. 47764

(4) For taxes levied within the ten-mill limitation for debt 47765
purposes in tax year 1998 in the case of electric company tax 47766
value losses, and in tax year 1999 in the case of natural gas 47767
company tax value losses, payments shall be made equal to one 47768
hundred per cent of the loss computed as if the tax were a 47769
fixed-rate levy, but those payments shall extend from fiscal year 47770
2006 through fiscal year 2016. 47771

The department of education shall report to each school 47772

district the apportionment of the payments among the school 47773
district's funds based on the certifications under division (J) of 47774
section 5727.84 of the Revised Code. 47775

(D) Not later than January 1, 2002, for all taxing districts 47776
in each joint vocational school district, the tax commissioner 47777
shall certify to the ~~director of budget and management~~ department 47778
of education the fixed-rate levy loss determined under division 47779
(G) of section 5727.84 of the Revised Code. From February 2002 to 47780
August 2016, the ~~director~~ department shall pay from the school 47781
district property tax replacement fund to the ~~county undivided~~ 47782
~~income tax fund in the proper county treasury,~~ joint vocational 47783
school district one-half of the ~~fixed rate levy loss so certified~~ 47784
~~for each year on or before each of the days prescribed for the~~ 47785
~~settlements under divisions (A) and (C) of section 321.24 of the~~ 47786
~~Revised Code. The county treasurer shall distribute such amounts~~ 47787
~~to the proper joint vocational school district as if they had been~~ 47788
~~levied and collected as taxes, and the joint vocational school~~ 47789
~~district shall apportion the amounts so received among its funds~~ 47790
~~in the same proportions as if those amounts had been levied and~~ 47791
~~collected as taxes~~ amount calculated for that fiscal year under 47792
division (A)(2) of this section between the twenty-first and 47793
twenty-eighth days of August and of February. 47794

(E)(1) Not later than January 1, 2002, for each fixed-sum 47795
levy levied by each school district or joint vocational school 47796
district and for each year for which a determination is made under 47797
division (H) of section 5727.84 of the Revised Code that a 47798
fixed-sum levy loss is to be reimbursed, the tax commissioner 47799
shall certify to the ~~director of budget and management~~ department 47800
of education the fixed-sum levy loss determined under that 47801
division. The certification shall cover a time period sufficient 47802
to include all fixed-sum levies for which the tax commissioner 47803
made such a determination. The ~~director~~ department shall pay from 47804

the school district property tax replacement fund to the county 47805
~~undivided income tax fund in the proper county treasury school~~ 47806
~~district or joint vocational school district~~ one-half of the 47807
fixed-sum levy loss so certified for each year ~~on or before each~~ 47808
~~of the days prescribed for the settlements under divisions (A) and~~ 47809
~~(C) of section 321.24 of the Revised Code. The county treasurer~~ 47810
~~shall distribute the amounts to the proper school district or~~ 47811
~~joint vocational school district as if they had been levied and~~ 47812
~~collected as taxes, and the district shall apportion the amounts~~ 47813
~~so received among its funds in the same proportions as if those~~ 47814
~~amounts had been levied and collected as taxes~~ between the 47815
twenty-first and twenty-eighth days of August and of February. 47816

(2) Beginning in 2003, by the thirty-first day of January of 47817
each year, the tax commissioner shall review the certification 47818
originally made under division (E)(1) of this section. If the 47819
commissioner determines that a ~~fixed-sum~~ debt levy that had been 47820
scheduled to be reimbursed in the current year has expired, a 47821
revised certification for that and all subsequent years shall be 47822
made to the ~~director of budget and management~~ department of 47823
education. 47824

(F) Beginning in August 2002, and ending in February 2017, 47825
the director of budget and management shall transfer from the 47826
school district property tax replacement fund to the general 47827
revenue fund each of the following: 47828

(1) Between the twenty-eighth day of August and the fifth day 47829
of September, the lesser of one-half of the amount certified for 47830
that fiscal year under division (A)(2) of this section or the 47831
balance in the school district property tax replacement fund; 47832

(2) Between the first and fifth days of March, the lesser of 47833
one-half of the amount certified for that fiscal year under 47834
division (A)(2) of this section or the balance in the school 47835
district property tax replacement fund. 47836

(G) By August 5, 2002, the tax commissioner shall estimate 47837
the amount of money in the school district property tax 47838
replacement fund in excess of the amount necessary to make 47839
payments ~~in that month~~ under divisions (C), (D), ~~and~~ (E), and (F) 47840
of this section. Notwithstanding division (C) of this section, the 47841
department of education, in consultation with the tax commissioner 47842
and from those excess funds, may pay any school district four and 47843
one-half times the amount certified under division (A)(2) of this 47844
section. Payments shall be made in order from the smallest annual 47845
loss to the largest annual loss. A payment made under this 47846
division shall be in lieu of the payment to be made in August 2002 47847
under division (C)(2) of this section. No payments shall be made 47848
in the manner established in this division to any school district 47849
with annual losses from permanent improvement fixed-rate levies in 47850
excess of twenty thousand dollars, or annual losses from any other 47851
fixed-rate levies in excess of twenty thousand dollars. A school 47852
district receiving a payment under this division is no longer 47853
entitled to any further payments under division (C) of this 47854
section. 47855

~~(G)~~(H) On the thirty-first day of July of 2003, 2004, 2005, 47856
and 2006, and on the thirty-first day of January and July of 2007 47857
and each year thereafter, if the amount credited to the school 47858
district property tax replacement fund exceeds the amount needed 47859
to make payments from the fund under divisions (C), (D), ~~and~~ (E), 47860
and (F) of this section ~~in the following month~~, the ~~director of~~ 47861
~~budget and management~~ department of education shall distribute the 47862
excess among school districts and joint vocational school 47863
districts. The amount distributed to each district shall bear the 47864
same proportion to the excess remaining in the fund as the ADM of 47865
the district bears to the ADM of all of the districts. For the 47866
purpose of this division, "ADM" means the formula ADM in the case 47867
of a school district, and the average daily membership reported 47868

under section 3317.03 of the Revised Code in the case of a joint 47869
vocational school district. 47870

If, in the opinion of the ~~director of budget and management~~ 47871
department of education, the excess remaining in the school 47872
district property tax replacement fund in any year is not 47873
sufficient to warrant distribution under this division, the excess 47874
shall remain to the credit of the fund. 47875

Amounts received by a school district or joint vocational 47876
school district under this division shall be used exclusively for 47877
capital improvements. 47878

~~(H) If (I) From fiscal year 2002 through fiscal year 2016, if~~ 47879
the total amount in the school district property tax replacement 47880
fund is insufficient to make all payments under divisions (C), 47881
(D), and (E) of this section, ~~the payments required under division~~ 47882
~~(E) of this section shall be made first in their entirety. After~~ 47883
~~all payments are made under division (E) of this section, payments~~ 47884
~~under divisions (C) and (D) of this section shall be made from the~~ 47885
~~balance of money available in the proportion of each school~~ 47886
~~district's or joint vocational school district's payment amount to~~ 47887
~~the total amount of payments under divisions (C) and (D) of this~~ 47888
~~section at the time the payments are to be made, the director of~~ 47889
budget and management shall transfer from the general revenue fund 47890
to the school district property tax replacement fund the 47891
difference between the total amount to be paid and the total 47892
amount in the school district property tax replacement fund. 47893

~~(I)~~(J) If all or a part of the territory of a school district 47895
or joint vocational school district is merged with or transferred 47896
to another district, the department of education, in consultation 47897
with the tax commissioner shall adjust the payments made under 47898
this section to each of the districts in proportion to the tax 47899
value loss apportioned to the merged or transferred territory. 47900

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(J)(K) There is hereby created the public utility property
tax study committee, effective January 1, 2011. The committee
shall consist of the following seven members: the tax
commissioner, three members of the senate appointed by the
president of the senate, and three members of the house of
representatives appointed by the speaker of the house of
representatives. The appointments shall be made not later than
January 31, 2011. The tax commissioner shall be the chairperson of
the committee.

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The committee shall study the extent to which each school
district or joint vocational school district has been compensated,
under sections 5727.84 and 5727.85 of the Revised Code as enacted
by Substitute Senate Bill No. 3 of the 123rd general assembly and
any subsequent acts, for the property tax loss caused by the
reduction in the assessment rates for natural gas, electric, and
rural electric company tangible personal property. Not later than
June 30, 2011, the committee shall issue a report of its findings,
including any recommendations for providing additional
compensation for the property tax loss or regarding remedial
legislation, to the president of the senate and the speaker of the
house of representatives, at which time the committee shall cease
to exist.

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The department of taxation and department of education shall
provide such information and assistance as is required for the
committee to carry out its duties.

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Sec. 5727.86. (A) Not later than January 1, 2002, the tax
commissioner shall ~~certify to the director of budget and~~
~~management, for all taxing districts in each local taxing unit,~~
~~the fixed rate levy loss determined under division (G), and the~~
~~fixed sum levy loss determined under division (H), of section~~

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5727.84 of the Revised Code. Based on that certification, the 47932
director shall compute the payments to be made to each local 47933
taxing unit for each year according to divisions (A)(1), (2), and 47934
(3), and (4) and division (E) of this section, and shall 47935
distribute the payments in the manner prescribed by division (C) 47936
of this section. The ~~certification~~ calculation of the fixed-sum 47937
levy loss shall cover a time period sufficient to include all 47938
fixed-sum levies for which the tax commissioner determined, 47939
pursuant to division (H) of section 5727.84 of the Revised Code, 47940
that a fixed-sum levy loss is to be reimbursed. 47941

(1) Except as provided in ~~division~~ divisions (A)(3) and (4) 47942
of this section, for fixed-rate levy losses determined under 47943
division (G) of section 5727.84 of the Revised Code, payments 47944
shall be made in each of the following years at the following 47945
percentage of the fixed-rate levy loss certified under division 47946
(A) of this section: 47947

YEAR	PERCENTAGE	
2002	100%	47948
2003	100%	47949
2004	100%	47950
2005	100%	47951
2006	100%	47952
2007	80%	47953
2008	80%	47954
2009	80%	47955
2010	80%	47956
2011	80%	47957
2012	66.7%	47958
2013	53.4%	47959
2014	40.1%	47960
2015	26.8%	47961
2016	13.5%	47962

2017 and thereafter 0% 47964

(2) For fixed-sum levy losses determined under division (H) 47965
of section 5727.84 of the Revised Code, payments shall be made in 47966
the amount of one hundred per cent of the fixed-sum levy loss 47967
~~certified under division (A) of this section~~ for payments required 47968
to be made in 2002 and thereafter. 47969

(3) A local taxing unit in a county of less than two hundred 47970
fifty square miles that receives eighty per cent or more of its 47971
combined general fund and bond retirement fund revenues from 47972
property taxes and rollbacks based on 1997 actual revenues as 47973
presented in its 1999 tax budget, and in which electric companies 47974
and rural electric companies comprise over twenty per cent of its 47975
property valuation, shall receive one hundred per cent of its 47976
fixed-rate levy losses from electric company tax value losses 47977
certified under division (A) of this section in years 2002 to 47978
2016. 47979

(4) For taxes levied within the ten-mill limitation for debt 47980
purposes in tax year 1998 in the case of electric company tax 47981
value losses, and in tax year 1999 in the case of natural gas 47982
company tax value losses, payments shall be made equal to one 47983
hundred per cent of the loss computed as if the tax were a 47984
fixed-rate levy, but those payments shall extend from fiscal year 47985
2006 through fiscal year 2016. 47986

(B) Beginning in 2003, by the thirty-first day of January of 47987
each year, the tax commissioner shall review the ~~certification~~ 47988
calculation originally made under division (A) of this section of 47989
the fixed-sum levy loss determined under division (H) of section 47990
5727.84 of the Revised Code. If the commissioner determines that a 47991
fixed-sum levy that had been scheduled to be reimbursed in the 47992
current year has expired, a revised ~~certification~~ calculation for 47993
that and all subsequent years shall be made. 47994

(C) Payments to local taxing units required to be made under 47995

divisions (A) and (E) of this section shall be paid from the local 47996
government property tax replacement fund to the county undivided 47997
income tax fund in the proper county treasury. One-half of the 47998
amount certified under those divisions shall be paid ~~on or before~~ 47999
~~each of the days prescribed for the settlements under divisions~~ 48000
~~(A) and (C) of section 321.24 of the Revised Code~~ between the 48001
twenty-first and twenty-eighth days of August and of February. The 48002
county treasurer shall distribute amounts paid under division (A) 48003
of this section to the proper local taxing unit as if they had 48004
been levied and collected as taxes, and the local taxing unit 48005
shall apportion the amounts so received among its funds in the 48006
same proportions as if those amounts had been levied and collected 48007
as taxes. Amounts distributed under division (E) of this section 48008
shall be credited to the general fund of the local taxing unit 48009
that receives them. 48010

(D) By February 5, 2002, the tax commissioner shall estimate 48011
the amount of money in the local government property tax 48012
replacement fund in excess of the amount necessary to make 48013
payments in that month under division (C) of this section. 48014
Notwithstanding division (A) of this section, the tax commissioner 48015
may pay any local taxing unit, from those excess funds, nine and 48016
four-tenths times the amount computed for 2002 under division 48017
(A)(1) of this section. A payment made under this division shall 48018
be in lieu of the payment to be made in February 2002 under 48019
division (A)(1) of this section. A local taxing unit receiving a 48020
payment under this division will no longer be entitled to any 48021
further payments under division (A)(1) of this section. A payment 48022
made under this division shall be paid from the local government 48023
property tax replacement fund to the county undivided income tax 48024
fund in the proper county treasury. The county treasurer shall 48025
distribute the payment to the proper local taxing unit as if it 48026
had been levied and collected as taxes, and the local taxing unit 48027

shall apportion the amounts so received among its funds in the 48028
same proportions as if those amounts had been levied and collected 48029
as taxes. 48030

(E) On the thirty-first day of July of 2002, 2003, 2004, 48031
2005, and 2006, and on the thirty-first day of January and July of 48032
2007 and each year thereafter, if the amount credited to the local 48033
government property tax replacement fund exceeds the amount needed 48034
to be distributed from the fund under division (A) of this section 48035
in the following month, the ~~director of budget and management tax~~ 48036
commissioner shall distribute the excess to each county as 48037
follows: 48038

(1) One-half shall be distributed to each county in 48039
proportion to each county's population. 48040

(2) One-half shall be distributed to each county in the 48041
proportion that the amounts determined under divisions (G) and (H) 48042
of section 5727.84 of the Revised Code for all local taxing units 48043
in the county is of the total amounts so determined for all local 48044
taxing units in the state. 48045

The amounts distributed to each county under this division 48046
shall be distributed by the county ~~budget commission~~ treasurer to 48047
each local taxing unit in the county in the proportion that the 48048
unit's current taxes charged and payable are of the total current 48049
taxes charged and payable of all the local taxing units in the 48050
county. As used in this division, "current taxes charged and 48051
payable" means the taxes charged and payable as most recently 48052
determined for local taxing units in the county. 48053

If, in the opinion of the ~~director of budget and management~~ 48054
tax commissioner, the excess remaining in the local government 48055
property tax replacement fund in any year is not sufficient to 48056
warrant distribution under this division, the excess shall remain 48057
to the credit of the fund. 48058

(F) ~~If From fiscal year 2002 through fiscal year 2016, if the~~ 48059
total amount in the local government property tax replacement fund 48060
is insufficient to make all payments under division (C) of this 48061
section, ~~the payments required under division (A)(2) of this~~ 48062
~~section shall be made first in their entirety. After all such~~ 48063
~~payments are made, payments under divisions (A)(1) and (3) of this~~ 48064
~~section shall be made from the balance of money available in the~~ 48065
~~proportion of each local taxing unit's payment amount to the total~~ 48066
~~amount of all payments to be made under divisions (A)(1) and (3)~~ 48067
~~of this section at the times the payments are to be made, the~~ 48068
~~director of budget and management shall transfer from the general~~ 48069
~~revenue fund to the local government property tax replacement fund~~ 48070
~~the difference between the total amount to be paid and the amount~~ 48071
~~in the local government property tax replacement fund.~~ 48072

(G) If all or a part of the territories of two or more local 48073
taxing units are merged, or unincorporated territory of a township 48074
is annexed by a municipal corporation, the tax commissioner shall 48075
adjust the payments made under this section to each of the local 48076
taxing units in proportion to the tax value loss apportioned to 48077
the merged or annexed territory, or as otherwise provided by a 48078
written agreement between the legislative authorities of the local 48079
taxing units certified to the tax commissioner not later than the 48080
first day of June of the calendar year in which the payment is to 48081
be made. 48082

Sec. 5727.87. (A) As used in this section: 48083

(1) "Administrative fees" means the dollar percentages 48084
allowed by the county auditor for services or by the county 48085
treasurer as fees, or paid to the credit of the real estate 48086
assessment fund, under divisions (A) and (B) of section 319.54 and 48087
division (A) of section 321.26 of the Revised Code. 48088

(2) "Administrative fee loss" means a county's loss of 48089

administrative fees due to its tax value loss, determined as 48090
follows: 48091

(a) For purposes of the determination made under division (B) 48092
of this section in the years 2002 through 2006, the administrative 48093
fee loss shall be computed by multiplying the amounts determined 48094
for all taxing districts in the county under divisions (G) and (H) 48095
of section 5727.84 of the Revised Code by nine thousand six 48096
hundred fifty-nine ten-thousandths of a ~~one~~ per cent, if total 48097
taxes collected in the county in ~~tax year 1998~~ 1999 exceeded one 48098
hundred fifty million dollars, or one and one thousand one hundred 48099
fifty-nine ten-thousandths of a ~~one~~ per cent, if total taxes 48100
collected in the county in ~~tax year 1998~~ 1999 were one hundred 48101
fifty million dollars or less; 48102

(b) For purposes of the determination under division (B) of 48103
this section in the years 2007 through 2011, the administrative 48104
fee loss shall be determined by subtracting from the dollar amount 48105
of administrative fees collected in the county in ~~tax year 1998~~ 48106
1999, the dollar amount of administrative fees collected in the 48107
county in the current calendar year. 48108

(3) "Total taxes collected" means all money collected on any 48109
tax duplicate of the county, other than the estate tax duplicates. 48110
"Total taxes collected" does not include amounts received pursuant 48111
to divisions (F) and (G) of section 321.24 or section 323.156 of 48112
the Revised Code. 48113

(B) Not later than the thirty-first day of December of 2001 48114
through 2005, the tax commissioner shall certify to each county 48115
auditor the tax levy losses calculated under divisions (G) and (H) 48116
of section 5727.84 of the Revised Code for each school district, 48117
joint vocational school district, and local taxing unit in the 48118
county. Not later than the ~~first~~ thirty-first day of ~~June~~ January 48119
of 2002 through 2011, the county auditor shall determine the 48120
administrative fee loss for the county ~~and certify it to the~~ 48121

~~county budget commission. Notwithstanding divisions (C), (D), and (E) of section 5727.85 and division (C) of section 5727.86 of the Revised Code, prior to distribution by the county treasurer of the payments provided under those divisions, the county budget commission shall deduct from those payments the amount of the administrative fee loss certified by the county auditor, as follows:~~

~~(1) Seventy per cent of the administrative fee loss shall be deducted from the payments provided under divisions (C), (D), and (E) of section 5727.85 of the Revised Code.~~

~~(2) Thirty per cent of the administrative fee loss shall be deducted from the payments provided under division (C) of section 5727.86 of the Revised Code and apportion that loss ratably among the school districts, joint vocational school districts, and local taxing units on the basis of the tax levy losses certified under this division.~~

~~(C) On or before each of the days prescribed for the settlements under divisions (A) and (C) of section 321.24 of the Revised Code in the years 2002 through 2011, the county budget commission treasurer shall pay deduct one-half of the amount apportioned to each school district, joint vocational school district, and local taxing unit from the portions of revenue payable to them.~~

~~(D) On or before each of the days prescribed for settlements under divisions (A) and (C) of section 321.24 of the Revised Code in the years 2002 through 2011, the county auditor shall cause to be deposited an amount equal to one-half of the amount of the administrative fee loss to the county auditor, county treasurer, or real estate assessment fund as if the amount had been allowed as administrative fees, and shall deposit the amount in the same funds as if allowed as administrative fees.~~

After payment of the administrative fee loss on or before

August 10, 2011, all payments under this section shall cease.

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Sec. 5728.08. Except as provided in section 5728.03 of the Revised Code and except as otherwise provided in this section, whoever is liable for the payment of the tax levied by section 5728.06 of the Revised Code, on or before the last day of each January, April, July, and October, shall file with the ~~treasurer of state~~ tax commissioner, on forms prescribed by the tax commissioner, a highway use tax return and make payment of the full amount of the tax due for the operation of each commercial car and commercial tractor for the next preceding three calendar months. If the commercial cars or commercial tractors are farm trucks and the amount of motor fuel used to operate the trucks during the next preceding twelve calendar months was less than fifteen thousand gallons, the highway use tax return shall be filed and the full amount of tax due paid on or before the last day of each July for the next preceding twelve calendar months. If the commercial cars or commercial tractors are farm trucks and the amount of motor fuel used to operate the trucks during the next preceding twelve calendar months was fifteen thousand gallons or more, the highway use tax return shall be filed and the full amount of the tax due paid either on or before the last day of each July for the next preceding twelve calendar months, or on or before the last day of each January, April, July, and October for the next preceding three calendar months, at the option of the person liable for payment of the tax. If the commercial cars or commercial tractors are not farm trucks, and if, in the estimation of the tax commissioner, the amount of the tax due does not warrant quarterly filing, the commissioner may authorize the filing of the highway use tax return and payment of the full amount due on or before the last day of each July for the next preceding twelve months.

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~~Immediately upon the receipt of a highway use tax return, the~~

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~~treasurer of state shall mark on the return the date it was~~ 48186
~~received by the treasurer of state and the amount of tax payment~~ 48187
~~accompanying the return and shall transmit the return to the~~ 48188
~~The~~ 48189
tax commissioner shall immediately forward to the treasurer of 48190
state all money received from the tax levied by section 5728.06 of 48191
the Revised Code.

The treasurer of state shall place to the credit of the tax 48192
refund fund created by section 5703.052 of the Revised Code, out 48193
of receipts from the taxes levied by section 5728.06 of the 48194
Revised Code, amounts equal to the refund certified by the tax 48195
commissioner pursuant to section 5728.061 of the Revised Code. 48196
Receipts from the tax shall be used by the tax commissioner to 48197
defray expenses incurred by the department of taxation in 48198
administering sections 5728.01 to 5728.14 of the Revised Code. 48199

All moneys received in the state treasury from taxes levied 48200
by section 5728.06 of the Revised Code and fees assessed under 48201
sections 5728.02 and 5728.03 of the Revised Code which are not 48202
required to be placed to the credit of the tax refund fund as 48203
provided by this section shall, during each calendar year, be 48204
credited to the highway improvement bond retirement fund created 48205
by section 5528.12 of the Revised Code until the commissioners of 48206
the sinking fund certify to the treasurer of state, as required by 48207
section 5528.17 of the Revised Code, that there are sufficient 48208
moneys to the credit of the highway improvement bond retirement 48209
fund to meet in full all payments of interest, principal, and 48210
charges for the retirement of bonds and other obligations issued 48211
pursuant to Section 2g of Article VIII, Ohio Constitution, and 48212
sections 5528.10 and 5528.11 of the Revised Code due and payable 48213
during the current calendar year and during the next succeeding 48214
calendar year. From the date of the receipt of the certification 48215
required by section 5528.17 of the Revised Code by the treasurer 48216
of state until the thirty-first day of December of the calendar 48217

year in which the certification is made, all moneys received in 48218
the state treasury from taxes levied under section 5728.06 of the 48219
Revised Code and fees assessed under sections 5728.02 and 5728.03 48220
of the Revised Code which are not required to be placed to the 48221
credit of the tax refund fund as provided by this section shall be 48222
credited to the highway obligations bond retirement fund created 48223
by section 5528.32 of the Revised Code until the commissioners of 48224
the sinking fund certify to the treasurer of state, as required by 48225
section 5528.38 of the Revised Code, that there are sufficient 48226
moneys to the credit of the highway obligations bond retirement 48227
fund to meet in full all payments of interest, principal, and 48228
charges for the retirement of bonds and other obligations issued 48229
pursuant to Section 2i of Article VIII, Ohio Constitution, and 48230
sections 5528.30 and 5528.31 of the Revised Code due and payable 48231
during the current calendar year and during the next succeeding 48232
calendar year. From the date of the receipt of the certification 48233
required by section 5528.38 of the Revised Code by the treasurer 48234
of state until the thirty-first day of December of the calendar 48235
year in which the certification is made, all moneys received in 48236
the state treasury from taxes levied under section 5728.06 of the 48237
Revised Code and fees assessed under sections 5728.02 and 5728.03 48238
of the Revised Code which are not required to be placed to the 48239
credit of the tax refund fund as provided by this section shall be 48240
credited to the highway operating fund created by section 5735.291 48241
of the Revised Code, except as provided by the next succeeding 48242
paragraph of this section. 48243

From the date of the receipt by the treasurer of state of 48244
certifications from the commissioners of the sinking fund, as 48245
required by sections 5528.18 and 5528.39 of the Revised Code, 48246
certifying that the moneys to the credit of the highway 48247
improvement bond retirement fund are sufficient to meet in full 48248
all payments of interest, principal, and charges for the 48249

retirement of all bonds and other obligations which may be issued 48250
pursuant to Section 2g of Article VIII, Ohio Constitution, and 48251
sections 5528.10 and 5528.11 of the Revised Code, and to the 48252
credit of the highway obligations bond retirement fund are 48253
sufficient to meet in full all payments of interest, principal, 48254
and charges for the retirement of all obligations issued pursuant 48255
to Section 2i of Article VIII, Ohio Constitution, and sections 48256
5528.30 and 5528.31 of the Revised Code, all moneys received in 48257
the state treasury from the taxes levied under section 5728.06 and 48258
fees assessed under sections 5728.02 and 5728.03 of the Revised 48259
Code, which are not required to be placed to the credit of the tax 48260
refund fund as provided by this section, shall be deposited to the 48261
credit of the highway operating fund. 48262

As used in this section, "farm truck" means any commercial 48263
car or commercial tractor that is registered as a farm truck under 48264
Chapter 4503. of the Revised Code. 48265

Sec. 5729.07. As used in this section: 48266

(A) "Eligible employee" and "eligible training costs" have 48267
the same meanings as in section 5733.42 of the Revised Code. 48268

(B) "Credit period" means the calendar year ending on the 48269
thirty-first day of December next preceding the day the annual 48270
statement is required to be returned under section 5729.02 of the 48271
Revised Code. 48272

There is hereby allowed a nonrefundable credit against the 48273
tax imposed under this chapter for a foreign insurance company for 48274
which a tax credit certificate is issued under section 5733.42 of 48275
the Revised Code. The credit may be claimed for credit periods 48276
beginning on or after January 1, ~~2001~~ 2003, and ending on or 48277
before December 31, ~~2003~~ 2005. The amount of the credit for the 48278
credit period beginning on January 1, 2003, shall equal one-half 48279
of the average of the eligible training costs paid or incurred by 48280

the company during ~~the three~~ calendar years immediately preceding 48281
~~the credit period for which the credit is claimed 1998, 1999, and~~ 48282
2000, not to exceed one thousand dollars for each eligible 48283
employee on account of whom eligible training costs were paid or 48284
incurred by the company. The amount of the credit for the credit 48285
period beginning on January 1, 2004, shall equal one-half of the 48286
average of the eligible training costs paid or incurred by the 48287
company during calendar years 2002, 2003, and 2004, not to exceed 48288
one thousand dollars for each eligible employee on account of whom 48289
eligible training costs were paid or incurred by the company. The 48290
amount of the credit for the credit period beginning on January 1, 48291
2005, shall equal one-half of the average of the eligible training 48292
costs paid or incurred by the company during calendar years 2003, 48293
2004, and 2005, not to exceed one thousand dollars for each 48294
eligible employee on account of whom eligible training costs were 48295
paid or incurred by the company. The credit claimed by a company 48296
for each credit period shall not exceed one hundred thousand 48297
dollars. 48298

A foreign insurance company shall apply to the director of 48299
job and family services for a tax credit certificate in the manner 48300
prescribed by division (C) of section 5733.42 of the Revised Code. 48301
Divisions (C) to (H) of that section govern the tax credit allowed 48302
by this section, except that "credit period" shall be substituted 48303
for "tax year with respect to a calendar year" wherever that 48304
phrase appears in those divisions and that the company shall be 48305
considered a taxpayer for the purposes of those divisions. 48306

A foreign insurance company may carry forward the credit 48307
allowed under this section to the extent that the credit exceeds 48308
the company's tax due for the credit period. The company may carry 48309
the excess credit forward for three credit periods following the 48310
credit period for which the credit is first claimed under this 48311
section. The credit allowed by this section is in addition to any 48312

credit allowed under section 5729.031 of the Revised Code. 48313

The reduction in the tax due under this chapter to the extent 48314
of the credit allowed by this section does not increase the amount 48315
of the tax otherwise due under section 5729.06 of the Revised 48316
Code. 48317

Sec. 5731.21. (A)(1)(a) Except as provided under division 48318
(A)(3) of this section, the executor or administrator, or, if no 48319
executor or administrator has been appointed, another person in 48320
possession of property the transfer of which is subject to estate 48321
taxes under section 5731.02 or division (A) of section 5731.19 of 48322
the Revised Code, shall file an estate tax return, within nine 48323
months of the date of the decedent's death, in the form prescribed 48324
by the tax commissioner, in duplicate, with the probate court of 48325
the county. The return shall include all property the transfer of 48326
which is subject to estate taxes, whether that property is 48327
transferred under the last will and testament of the decedent or 48328
otherwise. The time for filing the return may be extended by the 48329
tax commissioner. 48330

(b) The estate tax return described in division (A)(1)(a) of 48331
this section shall be accompanied by a certificate, in the form 48332
prescribed by the tax commissioner, that is signed by the 48333
executor, administrator, or other person required to file the 48334
return, and that states all of the following: 48335

(i) The fact that the return was filed; 48336

(ii) The date of the filing of the return; 48337

(iii) The fact that the estate taxes under section 5731.02 or 48338
division (A) of section 5731.19 of the Revised Code, that are 48339
shown to be due in the return, have been paid in full; 48340

(iv) If applicable, the fact that real property listed in the 48341
inventory for the decedent's estate is included in the return; 48342

(v) If applicable, the fact that real property not listed in the inventory for the decedent's estate, including, but not limited to, survivorship tenancy property as described in section 5302.17 of the Revised Code or transfer on death property as described in sections 5302.22 and 5302.23 of the Revised Code, also is included in the return. In this regard, the certificate additionally shall describe that real property by the same description used in the return.

(2) The probate court shall forward one copy of the estate tax return described in division (A)(1)(a) of this section to the tax commissioner.

(3) A person may, but shall not be required to, file a return under division (A) of this section if the decedent was a resident of this state and the value of the decedent's gross estate is twenty-five thousand dollars or less in the case of a decedent dying on or after July 1, 1968, but before January 1, 2001; two hundred thousand dollars or less in the case of a decedent dying on or after January 1, 2001, but before January 1, 2002; or three hundred thirty-eight thousand three hundred thirty-three dollars or less in the case of a decedent dying on or after January 1, 2002. If a probate court issues an order that grants a summary release from administration in connection with a decedent's estate under section 2113.031 of the Revised Code, that order eliminates the duty of all persons to file an estate tax return and certificate under divisions (A)(1)(a) and (b) of this section with respect to the estate for which the order was granted.

(4)(a) Upon receipt of the estate tax return described in division (A)(1)(a) of this section and the accompanying certificate described in division (A)(1)(b) of this section, the probate court promptly shall give notice of the return, by a form prescribed by the tax commissioner, to the county auditor. The

auditor then shall make a charge based upon the notice and shall 48375
certify a duplicate of the charge to the county treasurer. The 48376
treasurer then shall collect, subject to division (A) of section 48377
5731.25 of the Revised Code or any other statute extending the 48378
time for payment of an estate tax, the tax so charged. 48379

(b) Upon receipt of the return and the accompanying 48380
certificate, the probate court also shall forward the certificate 48381
to the auditor. When satisfied that the estate taxes under section 48382
5731.02 or division (A) of section 5731.19 of the Revised Code, 48383
that are shown to be due in the return, have been paid in full, 48384
the auditor shall stamp the certificate so forwarded to verify 48385
that payment. The auditor then shall return the stamped 48386
certificate to the probate court. 48387

(5)(a) The certificate described in division (A)(1)(b) of 48388
this section is a public record subject to inspection and copying 48389
in accordance with section 149.43 of the Revised Code. It shall be 48390
kept in the records of the probate court pertaining to the 48391
decendent's estate and is not subject to the confidentiality 48392
provisions of section 5731.90 of the Revised Code. 48393

(b) All persons are entitled to rely on the statements 48394
contained in a certificate as described in division (A)(1)(b) of 48395
this section if it has been filed in accordance with that 48396
division, forwarded to a county auditor and stamped in accordance 48397
with division (A)(4) of this section, and placed in the records of 48398
the probate court pertaining to the decendent's estate in 48399
accordance with division (A)(5)(a) of this section. The real 48400
property referred to in the certificate shall be free of, and may 48401
be regarded by all persons as being free of, any lien for estate 48402
taxes under section 5731.02 and division (A) of section 5731.19 of 48403
the Revised Code. 48404

(B) An estate tax return filed under this section, in the 48405
form prescribed by the tax commissioner, and showing that no 48406

estate tax is due shall result in a determination that no estate 48407
tax is due, if the tax commissioner within three months after the 48408
receipt of the return by the department of taxation, fails to file 48409
exceptions to the return in the probate court of the county in 48410
which the return was filed. A copy of exceptions to a return of 48411
that nature, when the tax commissioner files them within that 48412
period, shall be sent by ordinary mail to the person who filed the 48413
return. The tax commissioner is not bound under this division by a 48414
determination that no estate tax is due, with respect to property 48415
not disclosed in the return. 48416

(C) If the executor, administrator, or other person required 48417
to file an estate tax return fails to file it within nine months 48418
of the date of the decedent's death, the tax commissioner may 48419
determine the estate tax in that estate and issue a certificate of 48420
determination in the same manner as is provided in division (B) of 48421
section 5731.27 of the Revised Code. A certificate of 48422
determination of that nature has the same force and effect as 48423
though a return had been filed and a certificate of determination 48424
issued with respect to the return. 48425

Sec. 5733.02. Annually, between the first day of January and 48426
the thirty-first day of March or on or before the date as extended 48427
under section 5733.13 of the Revised Code, each taxpayer shall 48428
make a report in writing to the ~~treasurer of state tax~~ 48429
commissioner in such form as the tax commissioner prescribes, and 48430
shall remit to the ~~treasurer of state~~ commissioner, with the 48431
remittance made payable to the treasurer of state, the amount of 48432
the tax as shown to be due by such report less the amount paid for 48433
the year on a declaration of estimated tax report filed by the 48434
taxpayer as provided by section 5733.021 of the Revised Code. 48435
Remittance shall be made in the form prescribed by the ~~treasurer~~ 48436
~~of state~~ commissioner, including electronic funds transfer if 48437
required by section 5733.022 of the Revised Code. ~~The treasurer~~ 48438

~~shall show on the report the date it was filed and the amount of 48439
the payment remitted to the treasurer. Thereafter, the treasurer 48440
shall immediately transmit all reports filed under this section to 48441
the tax commissioner. 48442~~

The commissioner shall furnish corporations, on request, 48443
copies of the forms prescribed by the commissioner for the purpose 48444
of making such report. A domestic corporation shall not dissolve, 48445
and a foreign corporation shall not withdraw or retire from 48446
business in Ohio, on or after the first day of January in any year 48447
without making a franchise tax report to the commissioner and 48448
paying or securing the tax charged for the year in which such 48449
dissolution or withdrawal occurs. 48450

The annual corporation report shall be signed by the 48451
president, vice-president, secretary, treasurer, general manager, 48452
superintendent, or managing agent in this state of such 48453
corporation. If a domestic corporation has not completed its 48454
organization, its annual report shall be signed by one of its 48455
incorporators. 48456

The report shall contain the facts, figures, computations, 48457
and attachments that result in the tax charged by this chapter and 48458
determined in the manner provided within the chapter. 48459

Sec. 5733.021. (A) Each taxpayer which does not in the month 48460
of January file the report and make the payment required by 48461
section 5733.02 of the Revised Code shall make and file a 48462
declaration of estimated tax report for the tax year. 48463

The declaration of estimated tax report shall be filed with 48464
the ~~treasurer of state~~ tax commissioner on or before the last day 48465
of January in such form as prescribed by the tax commissioner, and 48466
shall reflect an estimate of the total amount due under this 48467
chapter for the tax year. 48468

(B) A taxpayer required to file a declaration of estimated 48469

tax report shall make remittance of such estimated tax to the 48470
~~treasurer of state~~ tax commissioner as follows: 48471

(1) The entire estimated tax at the time of filing the 48472
declaration of estimated tax report, if such estimated tax is not 48473
in excess of the minimum tax as provided in section 5733.06 of the 48474
Revised Code; 48475

(2) If the estimated tax is in excess of the minimum tax: 48476

(a) One-third of the estimated tax at the time of filing the 48477
declaration of estimated tax report; 48478

(b) Two-thirds of the estimated tax on or before the last day 48479
of March of the tax year, unless the report and payment required 48480
by section 5733.02 of the Revised Code ~~is~~ are filed and paid on or 48481
before the last day of March of the tax year~~.~~ 48482

(3) If the estimated tax due is in excess of the minimum tax, 48483
and an extension of time for filing the report required by section 48484
5733.02 of the Revised Code has been granted pursuant to section 48485
5733.13 of the Revised Code~~;~~ 48486

(a) One-third of the estimated tax at the time of filing the 48487
declaration of estimated tax report; 48488

(b) One-third of the estimated tax on or before the last day 48489
of March of the tax year; 48490

(c) One-third of the estimated tax on or before the last day 48491
of May of the tax year, unless the report and payments required by 48492
section 5733.02 of the Revised Code are filed and paid on or 48493
before the last day of May of the tax year. 48494

Remittance of the estimated tax shall be made payable to the 48495
treasurer of state and shall be made in the form prescribed by the 48496
~~treasurer of state~~ tax commissioner, including electronic funds 48497
transfer if required by section 5733.022 of the Revised Code. 48498

The tax commissioner shall immediately forward to the 48499

~~treasurer of state all amounts received under this section, and 48500
the treasurer of state shall credit all payments of such estimated 48501
tax as provided in section 5733.12 of the Revised Code, shall show 48502
on all reports the date each was filed and the amount of payment 48503
remitted, and shall immediately transmit all reports filed under 48504
this section to the tax commissioner. 48505~~

Sec. 5733.053. (A) As used in this section: 48506

(1) "Transfer" means a transaction or series of related 48507
transactions in which a corporation directly or indirectly 48508
transfers or distributes substantially all of its assets or equity 48509
to another corporation, if the transfer or distribution qualifies 48510
for nonrecognition of gain or loss under the Internal Revenue 48511
Code. 48512

(2) "Transferor" means a corporation that has made a 48513
transfer. 48514

(3) "Transferee" means a corporation that received 48515
substantially all of the assets or equity of a transferor in a 48516
transfer. 48517

(B) ~~For~~ Except as provided in division (F) of this section, 48518
for purposes of valuing its issued and outstanding shares of stock 48519
under division (B) of section 5733.05 of the Revised Code, a 48520
transferee shall add to its net income allocated or apportioned to 48521
this state its transferor's net income allocated or apportioned to 48522
this state. The transferee shall add such income in computing its 48523
tax for the same tax year or years that such income would have 48524
been reported by the transferor if the transfer had not been made. 48525
The transferee shall add such income only to the extent the income 48526
is not required to be reported by the transferor for the purposes 48527
of the tax imposed by divisions (A) and (B) of section 5733.06 of 48528
the Revised Code. 48529

(C) The following shall be determined in the same manner as 48530

if the transfer had not been made: 48531

(1) The transferor's net income allocated or apportioned to 48532
this state for the tax year under divisions (B)(1) and (2) of 48533
section 5733.05 of the Revised Code; 48534

(2) The transferor's requirements for the combination of net 48535
income under section 5733.052 of the Revised Code; 48536

(3) Any other determination regarding the transferor that is 48537
necessary to avoid an absurd or unreasonable result in the 48538
application of this chapter. 48539

(D) A transferee shall be allowed the following credits and 48540
shall make the following adjustments in the same manner that they 48541
would have been available to the transferor: 48542

(1) The credits enumerated in section 5733.98 of the Revised 48543
Code; 48544

(2) The deduction under division (I)(1) of section 5733.04 of 48545
the Revised Code for net operating losses incurred by its 48546
transferor, subject to the limitations set forth in sections 381 48547
and 382 of the Internal Revenue Code concerning net operating loss 48548
carryovers; 48549

(3) Any other deduction from or addition to net income under 48550
this chapter involving the transferor, the disallowance of which 48551
would be absurd or unreasonable. Such adjustments to net income 48552
and allowance of credits shall be subject to the limitations set 48553
forth in sections 381 and 382 of the Internal Revenue Code and 48554
regulations prescribed thereunder. 48555

(E) If a transferee subject to this section subsequently 48556
becomes a transferor, any net income that the transferee would 48557
have been required to add under division (B) of this section shall 48558
be included in its income as a transferor and any credits or 48559
adjustments to which the transferee would have been entitled under 48560

division (D) of this section shall be available to it as a
transferor.

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(F) The amendments made to this section by Am. Sub. S.B. 287
of the 123rd general assembly do not apply to any transfer for
which negotiations began prior to January 1, 2001, and that was
commenced in and completed during calendar year 2001, unless the
transferee makes an election prior to December 31, 2001, to apply
those amendments.

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Sec. 5733.056. (A) As used in this section:

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(1) "Billing address" means the address where any notice,
statement, or bill relating to a customer's account is mailed, as
indicated in the books and records of the taxpayer on the first
day of the taxable year or on such later date in the taxable year
when the customer relationship began.

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(2) "Borrower or credit card holder located in this state"
means:

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(a) A borrower, other than a credit card holder, that is
engaged in a trade or business and maintains its commercial
domicile in this state; or

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(b) A borrower that is not engaged in a trade or business, or
a credit card holder, whose billing address is in this state.

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(3) "Branch" means a "domestic branch" as defined in section
3 of the "Federal Deposit Insurance Act," 64 Stat. 873, 12 U.S.C.
1813(o), as amended.

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(4) "Compensation" means wages, salaries, commissions, and
any other form of remuneration paid to employees for personal
services that are included in such employee's gross income under
the Internal Revenue Code. In the case of employees not subject to
the Internal Revenue Code, such as those employed in foreign
countries, the determination of whether such payments would

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constitute gross income to such employees under the Internal 48591
Revenue Code shall be made as though such employees were subject 48592
to the Internal Revenue Code. 48593

(5) "Credit card" means a credit, travel, or entertainment 48594
card. 48595

(6) "Credit card issuer's reimbursement fee" means the fee a 48596
taxpayer receives from a merchant's bank because one of the 48597
persons to whom the taxpayer has issued a credit card has charged 48598
merchandise or services to the credit card. 48599

(7) "Deposits" has the meaning given in section 3 of the 48600
"Federal Deposit Insurance Act," 64 Stat. 873, 12 U.S.C. 1813(1), 48601
as amended. 48602

(8) "Employee" means, with respect to a particular taxpayer, 48603
any individual who under the usual common law rules applicable in 48604
determining the employer-employee relationship, has the status of 48605
an employee of that taxpayer. 48606

(9) "Gross rents" means the actual sum of money or other 48607
consideration payable for the use or possession of property. 48608
"Gross rents" includes: 48609

(a) Any amount payable for the use or possession of real 48610
property or tangible personal property whether designated as a 48611
fixed sum of money or as a percentage of receipts, profits, or 48612
otherwise; 48613

(b) Any amount payable as additional rent or in lieu of rent, 48614
such as interest, taxes, insurance, repairs, or any other amount 48615
required to be paid by the terms of a lease or other arrangement; 48616
and 48617

(c) A proportionate part of the cost of any improvement to 48618
real property made by or on behalf of the taxpayer which reverts 48619
to the owner or lessor upon termination of a lease or other 48620

arrangement. The amount to be included in gross rents is the
amount of amortization or depreciation allowed in computing the
taxable income base for the taxable year. However, where a
building is erected on leased land, by or on behalf of the
taxpayer, the value of the land is determined by multiplying the
gross rent by eight, and the value of the building is determined
in the same manner as if owned by the taxpayer.

(d) The following are not included in the term "gross rents":

(i) Reasonable amounts payable as separate charges for water
and electric service furnished by the lessor;

(ii) Reasonable amounts payable as service charges for
janitorial services furnished by the lessor;

(iii) Reasonable amounts payable for storage, provided such
amounts are payable for space not designated and not under the
control of the taxpayer; and

(iv) That portion of any rental payment which is applicable
to the space subleased from the taxpayer and not used by it.

(10) "Loan" means any extension of credit resulting from
direct negotiations between the taxpayer and its customer, or the
purchase, in whole or in part, of such extension of credit from
another. Loans include debt obligations of subsidiaries,
participations, syndications, and leases treated as loans for
federal income tax purposes. "Loan" does not include: properties
treated as loans under section 595 of the Internal Revenue Code;
futures or forward contracts; options; notional principal
contracts such as swaps; credit card receivables, including
purchased credit card relationships; non-interest bearing balances
due from depositor institutions; cash items in the process of
collection; federal funds sold; securities purchased under
agreements to resell; assets held in a trading account;

securities; interests in a real estate mortgage investment conduit 48652
or other mortgage-backed or asset-backed security; and other 48653
similar items. 48654

(11) "Loan secured by real property" means that fifty per 48655
cent or more of the aggregate value of the collateral used to 48656
secure a loan or other obligation, when valued at fair market 48657
value as of the time the original loan or obligation was incurred, 48658
was real property. 48659

(12) "Merchant discount" means the fee, or negotiated 48660
discount, charged to a merchant by the taxpayer for the privilege 48661
of participating in a program whereby a credit card is accepted in 48662
payment for merchandise or services sold to the card holder. 48663

(13) "Participation" means an extension of credit in which an 48664
undivided ownership interest is held on a pro rata basis in a 48665
single loan or pool of loans and related collateral. In a loan 48666
participation, the credit originator initially makes the loan and 48667
then subsequently resells all or a portion of it to other lenders. 48668
The participation may or may not be known to the borrower. 48669

(14) "Principal base of operations" with respect to 48670
transportation property means the place of more or less permanent 48671
nature from which the property is regularly directed or 48672
controlled. With respect to an employee, the "principal base of 48673
operations" means the place of more or less permanent nature from 48674
which the employee regularly (a) starts work and to which the 48675
employee customarily returns in order to receive instructions from 48676
the employer or (b) communicates with the employee's customers or 48677
other persons or (c) performs any other functions necessary to the 48678
exercise of the trade or profession at some other point or points. 48679

(15) "Qualified institution" means a financial institution 48680
that on or after June 1, 1997: 48681

(a)(i) Has consummated one or more approved transactions with 48682

insured banks with different home states that would qualify under 48683
section 102 of the "Riegle-Neal Interstate Banking and Branching 48684
Efficiency Act of 1994," Public Law 103-328, 108 ~~stat.~~ Stat. 2338; 48685
48686

(ii) Is a federal savings association or federal savings bank 48687
that has consummated one or more interstate acquisitions that 48688
result in a financial institution that has branches in more than 48689
one state; or 48690

(iii) Has consummated one or more approved interstate 48691
acquisitions under authority of Title XI of the Revised Code that 48692
result in a financial institution that has branches in more than 48693
one state; and 48694

(b) Has at least ten per cent of its deposits in this state 48695
as of the last day of June prior to the beginning of the tax year. 48696

(16) "Real property owned" and "tangible personal property 48697
owned" mean real and tangible personal property, respectively, on 48698
which the taxpayer may claim depreciation for federal income tax 48699
purposes, or to which the taxpayer holds legal title and on which 48700
no other person may claim depreciation for federal income tax 48701
purposes, or could claim depreciation if subject to federal income 48702
tax. Real and tangible personal property do not include coin, 48703
currency, or property acquired in lieu of or pursuant to a 48704
foreclosure. 48705

(17) "Regular place of business" means an office at which the 48706
taxpayer carries on its business in a regular and systematic 48707
manner and which is continuously maintained, occupied, and used by 48708
employees of the taxpayer. 48709

(18) "State" means a state of the United States, the District 48710
of Columbia, the commonwealth of Puerto Rico, or any territory or 48711
possession of the United States. 48712

(19) "Syndication" means an extension of credit in which two 48713

or more persons fund and each person is at risk only up to a 48714
specified percentage of the total extension of credit or up to a 48715
specified dollar amount. 48716

(20) "Transportation property" means vehicles and vessels 48717
capable of moving under their own power, such as aircraft, trains, 48718
water vessels and motor vehicles, as well as any equipment or 48719
containers attached to such property, such as rolling stock, 48720
barges, trailers, or the like. 48721

(B) The annual financial institution report determines the 48722
value of the issued and outstanding shares of stock of the 48723
taxpayer, and is the base or measure of the franchise tax 48724
liability. Such determination shall be made as of the date shown 48725
by the report to have been the beginning of the financial 48726
institution's annual accounting period that includes the first day 48727
of January of the tax year. For purposes of this section, division 48728
(A) of section 5733.05, and division (D) of section 5733.06 of the 48729
Revised Code, the value of the issued and outstanding shares of 48730
stock of the financial institution shall include the total value, 48731
as shown by the books of the financial institution, of its 48732
capital, surplus, whether earned or unearned, undivided profits, 48733
and reserves, but exclusive of: 48734

(1) Reserves for accounts receivable, depreciation, 48735
depletion, and any other valuation reserves with respect to 48736
specific assets; 48737

(2) Taxes due and payable during the year for which such 48738
report was made; 48739

(3) Voting stock and participation certificates in 48740
corporations chartered pursuant to the "Farm Credit Act of 1971," 48741
85 Stat. 597, 12 U.S.C. 2091, as amended; 48742

(4) Good will, appreciation, and abandoned property as set up 48743
in the annual report of the financial institution, provided a 48744

certified balance sheet of the company is made available upon the 48745
request of the tax commissioner. Such balance sheet shall not be a 48746
part of the public records, but shall be a confidential report for 48747
use of the tax commissioner only. 48748

(5) A portion of the value of the issued and outstanding 48749
shares of stock of such financial institution equal to the amount 48750
obtained by multiplying such value by the quotient obtained by: 48751

(a) Dividing (1) the amount of the financial institution's 48752
assets, as shown on its books, represented by investments in the 48753
capital stock and indebtedness of public utilities of which at 48754
least eighty per cent of the utility's issued and outstanding 48755
common stock is owned by the financial institution by (2) the 48756
total assets of such financial institution as shown on its books; 48757

(b) Dividing (1) the amount of the financial institution's 48758
assets, as shown on its books, represented by investments in the 48759
capital stock and indebtedness of insurance companies of which at 48760
least eighty per cent of the insurance company's issued and 48761
outstanding common stock is owned by the financial institution by 48762
(2) the total assets of such financial institution as shown on its 48763
books; 48764

(c) Dividing (1) the amount of the financial institution's 48765
assets, as shown on its books, represented by investments in the 48766
capital stock and indebtedness of other financial institutions of 48767
which at least twenty-five per cent of the other financial 48768
institution's issued and outstanding common stock is owned by the 48769
financial institution by (2) the total assets of the financial 48770
institution as shown on its books. Division (B)(5)(c) of this 48771
section applies only with respect to such other financial 48772
institutions that for the tax year immediately following the 48773
taxpayer's taxable year will pay the tax imposed by division (D) 48774
of section 5733.06 of the Revised Code. 48775

(6) Land that has been determined pursuant to section 5713.31 48776
of the Revised Code by the county auditor of the county in which 48777
the land is located to be devoted exclusively to agricultural use 48778
as of the first Monday of June in the financial institution's 48779
taxable year. 48780

(7) Property within this state used exclusively during the 48781
taxable year for qualified research as defined in section 5733.05 48782
of the Revised Code. 48783

(C) The base upon which the tax levied under division (D) of 48784
section 5733.06 of the Revised Code shall be computed by 48785
multiplying the value of a financial institution's issued and 48786
outstanding shares of stock as determined in division (B) of this 48787
section by a fraction. The numerator of the fraction is the sum of 48788
the following: the property factor multiplied by fifteen, the 48789
payroll factor multiplied by fifteen, and the sales factor 48790
multiplied by seventy. The denominator of the fraction is one 48791
hundred, provided that the denominator shall be reduced by fifteen 48792
if the property factor has a denominator of zero, by fifteen if 48793
the payroll factor has a denominator of zero, and by seventy if 48794
the sales factor has a denominator of zero. 48795

(D) A financial institution shall calculate the property 48796
factor as follows: 48797

(1) The property factor is a fraction, the numerator of which 48798
is the average value of real property and tangible personal 48799
property rented to the taxpayer that is located or used within 48800
this state during the taxable year, the average value of real and 48801
tangible personal property owned by the taxpayer that is located 48802
or used within this state during the taxable year, and the average 48803
value of the taxpayer's loans and credit card receivables that are 48804
located within this state during the taxable year; and the 48805
denominator of which is the average value of all such property 48806
located or used within and without this state during the taxable 48807

year. 48808

(2)(a) The value of real property and tangible personal 48809
property owned by the taxpayer is the original cost or other basis 48810
of such property for federal income tax purposes without regard to 48811
depletion, depreciation, or amortization. 48812

(b) Loans are valued at their outstanding principal balance, 48813
without regard to any reserve for bad debts. If a loan is 48814
charged-off in whole or in part for federal income tax purposes, 48815
the portion of the loan charged-off is not outstanding. A 48816
specifically allocated reserve established pursuant to financial 48817
accounting guidelines which is treated as charged-off for federal 48818
income tax purposes shall be treated as charged-off for purposes 48819
of this section. 48820

(c) Credit card receivables are valued at their outstanding 48821
principal balance, without regard to any reserve for bad debts. If 48822
a credit card receivable is charged-off in whole or in part for 48823
federal income tax purposes, the portion of the receivable 48824
charged-off is not outstanding. 48825

(3) The average value of property owned by the taxpayer is 48826
computed on an annual basis by adding the value of the property on 48827
the first day of the taxable year and the value on the last day of 48828
the taxable year and dividing the sum by two. If averaging on this 48829
basis does not properly reflect average value, the tax 48830
commissioner may require averaging on a more frequent basis. The 48831
taxpayer may elect to average on a more frequent basis. When 48832
averaging on a more frequent basis is required by the tax 48833
commissioner or is elected by the taxpayer, the same method of 48834
valuation must be used consistently by the taxpayer with respect 48835
to property within and without this state and on all subsequent 48836
returns unless the taxpayer receives prior permission from the tax 48837
commissioner or the tax commissioner requires a different method 48838
of determining value. 48839

(4)(a) The average value of real property and tangible personal property that the taxpayer has rented from another and is not treated as property owned by the taxpayer for federal income tax purposes, shall be determined annually by multiplying the gross rents payable during the taxable year by eight.

(b) Where the use of the general method described in division (D)(4)(a) of this section results in inaccurate valuations of rented property, any other method which properly reflects the value may be adopted by the tax commissioner or by the taxpayer when approved in writing by the tax commissioner. Once approved, such other method of valuation must be used on all subsequent returns unless the taxpayer receives prior approval from the tax commissioner or the tax commissioner requires a different method of valuation.

(5)(a) Except as described in division (D)(5)(b) of this section, real property and tangible personal property owned by or rented to the taxpayer is considered to be located within this state if it is physically located, situated, or used within this state.

(b) Transportation property is included in the numerator of the property factor to the extent that the property is used in this state. The extent an aircraft will be deemed to be used in this state and the amount of value that is to be included in the numerator of this state's property factor is determined by multiplying the average value of the aircraft by a fraction, the numerator of which is the number of landings of the aircraft in this state and the denominator of which is the total number of landings of the aircraft everywhere. If the extent of the use of any transportation property within this state cannot be determined, then the property will be deemed to be used wholly in the state in which the property has its principal base of operations. A motor vehicle will be deemed to be used wholly in

the state in which it is registered. 48872

(6)(a)(i) A loan, other than a loan or advance described in 48873
division (D)(6)(d) of this section, is considered to be located 48874
within this state if it is properly assigned to a regular place of 48875
business of the taxpayer within this state. 48876

(ii) A loan is properly assigned to the regular place of 48877
business with which it has a preponderance of substantive 48878
contacts. A loan assigned by the taxpayer to a regular place of 48879
business without the state shall be presumed to have been properly 48880
assigned if: 48881

(I) The taxpayer has assigned, in the regular course of its 48882
business, such loan on its records to a regular place of business 48883
consistent with federal or state regulatory requirements; 48884

(II) Such assignment on its records is based upon substantive 48885
contacts of the load to such regular place of business; and 48886
48887

(III) The taxpayer uses the records reflecting assignment of 48888
loans for the filing of all state and local tax returns for which 48889
an assignment of loans to a regular place of business is required. 48890

(iii) The presumption of proper assignment of a loan provided 48891
in division (D)(6)(a)(ii) of this section may be rebutted upon a 48892
showing by the tax commissioner, supported by a preponderance of 48893
the evidence, that the preponderance of substantive contacts 48894
regarding such loan did not occur at the regular place of business 48895
to which it was assigned on the taxpayer's records. When such 48896
presumption has been rebutted, the loan shall then be located 48897
within this state if (1) the taxpayer had a regular place of 48898
business within this state at the time the loan was made; and (2) 48899
the taxpayer fails to show, by a preponderance of the evidence, 48900
that the preponderance of substantive contacts regarding such load 48901
did not occur within this state. 48902

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(b) In the case of a loan which is assigned by the taxpayer 48904
to a place without this state which is not a regular place of 48905
business, it shall be presumed, subject to rebuttal by the 48906
taxpayer on a showing supported by the preponderance of evidence, 48907
that the preponderance of substantive contacts regarding the loan 48908
occurred within this state if, at the time the loan was made the 48909
taxpayer's commercial domicile was within this state. 48910

(c) To determine the state in which the preponderance of 48911
substantive contacts relating to a loan have occurred, the facts 48912
and circumstances regarding the loan at issue shall be reviewed on 48913
a case-by-case basis and consideration shall be given to such 48914
activities as the solicitation, investigation, negotiation, 48915
approval, and administration of the loan. The terms 48916
"solicitation," "investigation," "negotiation," "approval," and 48917
"administration" are defined as follows: 48918

(i) "Solicitation" is either active or passive. Active 48919
solicitation occurs when an employee of the taxpayer initiates the 48920
contact with the customer. Such activity is located at the regular 48921
place of business which the taxpayer's employee is regularly 48922
connected with or working out of, regardless of where the services 48923
of such employee were actually performed. Passive solicitation 48924
occurs when the customer initiates the contact with the taxpayer. 48925
If the customer's initial contact was not at a regular place of 48926
business of the taxpayer, the regular place of business, if any, 48927
where the passive solicitation occurred is determined by the facts 48928
in each case. 48929

(ii) "Investigation" is the procedure whereby employees of 48930
the taxpayer determine the creditworthiness of the customer as 48931
well as the degree of risk involved in making a particular 48932
agreement. Such activity is located at the regular place of 48933
business which the taxpayer's employees are regularly connected 48934

with or working out of, regardless of where the services of such employees were actually performed. 48935
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(iii) Negotiation is the procedure whereby employees of the taxpayer and its customer determine the terms of the agreement, such as the amount, duration, interest rate, frequency of repayment, currency denomination, and security required. Such activity is located at the regular place of business to which the taxpayer's employees are regularly connected or working from, regardless of where the services of such employees were actually performed. 48937
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(iv) "Approval" is the procedure whereby employees or the board of directors of the taxpayer make the final determination whether to enter into the agreement. Such activity is located at the regular place of business to which the taxpayer's employees are regularly connected or working from, regardless of where the services of such employees were actually performed. If the board of directors makes the final determination, such activity is located at the commercial domicile of the taxpayer. 48945
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(v) "Administration" is the process of managing the account. This process includes bookkeeping, collecting the payments, corresponding with the customer, reporting to management regarding the status of the agreement, and proceeding against the borrower or the security interest if the borrower is in default. Such activity is located at the regular place of business that oversees this activity. 48953
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(d) A loan or advance to a subsidiary corporation at least fifty-one per cent of whose common stock is owned by the financial institution shall be allocated in and out of the state by the application of a ratio whose numerator is the sum of the net book value of the subsidiary's real property owned in this state and the subsidiary's tangible personal property owned in this state and whose denominator is the sum of the subsidiary's real property 48960
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owned wherever located and the subsidiary's tangible personal 48967
property owned wherever located. For purposes of calculating this 48968
ratio, the taxpayer shall determine net book value in accordance 48969
with generally accepted accounting principles. If the subsidiary 48970
corporation owns at least fifty-one per cent of the common stock 48971
of another corporation, the ratio shall be calculated by including 48972
the other corporation's real property and tangible personal 48973
property. The calculation of the ratio applies with respect to all 48974
lower-tiered subsidiaries, provided that the immediate parent 48975
corporation of the subsidiary owns at least fifty-one per cent of 48976
the common stock of that subsidiary. 48977

(7) For purposes of determining the location of credit card 48978
receivables, credit card receivables shall be treated as loans and 48979
shall be subject to division (D)(6) of this section. 48980

(8) A loan that has been properly assigned to a state shall, 48981
absent any change of material fact, remain assigned to that state 48982
for the length of the original term of the loan. Thereafter, the 48983
loan may be properly assigned to another state if the loan has a 48984
preponderance of substantive contact to a regular place of 48985
business there. 48986

(E) A financial institution shall calculate the payroll 48987
factor as follows: 48988

(1) The payroll factor is a fraction, the numerator of which 48989
is the total amount paid in this state during the taxable year by 48990
the taxpayer for compensation, and the denominator of which is the 48991
total compensation paid both within and without this state during 48992
the taxable year. 48993

(2) Compensation is paid in this state if any one of the 48994
following tests, applied consecutively, is met: 48995

(a) The employee's services are performed entirely within 48996
this state. 48997

(b) The employee's services are performed both within and 48998
without this state, but the service performed without this state 48999
is incidental to the employee's service within this state. The 49000
term "incidental" means any service which is temporary or 49001
transitory in nature, or which is rendered in connection with an 49002
isolated transaction. 49003

(c) The employee's services are performed both within and 49004
without this state, and: 49005

(i) The employee's principal base of operations is within 49006
this state; or 49007

(ii) There is no principal base of operations in any state in 49008
which some part of the services are performed, but the place from 49009
which the services are directed or controlled is in this state; or 49010
49011

(iii) The principal base of operations and the place from 49012
which the services are directed or controlled are not in any state 49013
in which some part of the service is performed but the employee's 49014
residence is in this state. 49015

(F) A financial institution shall calculate the sales factor 49016
as follows: 49017

(1) The sales factor is a fraction, the numerator of which is 49018
the receipts of the taxpayer in this state during the taxable year 49019
and the denominator of which is the receipts of the taxpayer 49020
within and without this state during the taxable year. The method 49021
of calculating receipts for purposes of the denominator is the 49022
same as the method used in determining receipts for purposes of 49023
the numerator. 49024

(2) The numerator of the sales factor includes receipts from 49025
the lease or rental of real property owned by the taxpayer if the 49026
property is located within this state, or receipts from the 49027
sublease of real property if the property is located within this 49028

state. 49029

(3)(a) Except as described in division (F)(3)(b) of this 49030
section the numerator of the sales factor includes receipts from 49031
the lease or rental of tangible personal property owned by the 49032
taxpayer if the property is located within this state when it is 49033
first placed in service by the lessee. 49034

(b) Receipts from the lease or rental of transportation 49035
property owned by the taxpayer are included in the numerator of 49036
the sales factor to the extent that the property is used in this 49037
state. The extent an aircraft will be deemed to be used in this 49038
state and the amount of receipts that is to be included in the 49039
numerator of this state's sales factor is determined by 49040
multiplying all the receipts from the lease or rental of the 49041
aircraft by a fraction, the numerator of which is the number of 49042
landings of the aircraft in this state and the denominator of 49043
which is the total number of landings of the aircraft. If the 49044
extent of the use of any transportation property within this state 49045
cannot be determined, then the property will be deemed to be used 49046
wholly in the state in which the property has its principal base 49047
of operations. A motor vehicle will be deemed to be used wholly in 49048
the state in which it is registered. 49049

(4)(a) The numerator of the sales factor includes interest 49050
and fees or penalties in the nature of interest from loans secured 49051
by real property if the property is located within this state. If 49052
the property is located both within this state and one or more 49053
other states, the receipts described in this paragraph are 49054
included in the numerator of the sales factor if more than fifty 49055
per cent of the fair market value of the real property is located 49056
within this state. If more than fifty per cent of the fair market 49057
value of the real property is not located within any one state, 49058
then the receipts described in this paragraph shall be included in 49059
the numerator of the sales factor if the borrower is located in 49060

this state. 49061

(b) The determination of whether the real property securing a 49062
loan is located within this state shall be made as of the time the 49063
original agreement was made and any and all subsequent 49064
substitutions of collateral shall be disregarded. 49065

(5) The numerator of the sales factor includes interest and 49066
fees or penalties in the nature of interest from loans not secured 49067
by real property if the borrower is located in this state. 49068

(6) The numerator of the sales factor includes net gains from 49069
the sale of loans. Net gains from the sale of loans includes 49070
income recorded under the coupon stripping rules of section 1286 49071
of the Internal Revenue Code. 49072

(a) The amount of net gains, but not less than zero, from the 49073
sale of loans secured by real property included in the numerator 49074
is determined by multiplying such net gains by a fraction the 49075
numerator of which is the amount included in the numerator of the 49076
sales factor pursuant to division (F)(4) of this section and the 49077
denominator of which is the total amount of interest and fees or 49078
penalties in the nature of interest from loans secured by real 49079
property. 49080

(b) The amount of net gains, but not less than zero, from the 49081
sale of loans not secured by real property included in the 49082
numerator is determined by multiplying such net gains by a 49083
fraction the numerator of which is the amount included in the 49084
numerator of the sales factor pursuant to division (F)(5) of this 49085
section and the denominator of which is the total amount of 49086
interest and fees or penalties in the nature of interest from 49087
loans not secured by real property. 49088

(7) The numerator of the sales factor includes interest and 49089
fees or penalties in the nature of interest from credit card 49090
receivables and receipts from fees charged to card holders, such 49091

as annual fees, if the billing address of the card holder is in 49092
this state. 49093

(8) The numerator of the sales factor includes net gains, but 49094
not less than zero, from the sale of credit card receivables 49095
multiplied by a fraction, the numerator of which is the amount 49096
included in the numerator of the sales factor pursuant to division 49097
(F)(7) of this section and the denominator of which is the 49098
taxpayer's total amount of interest and fees or penalties in the 49099
nature of interest from credit card receivables and fees charged 49100
to card holders. 49101

(9) The numerator of the sales factor includes all credit 49102
card issuer's reimbursement fees multiplied by a fraction, the 49103
numerator of which is the amount included in the numerator of the 49104
sales factor pursuant to division (F)(7) of this section and the 49105
denominator of which is the taxpayer's total amount of interest 49106
and fees or penalties in the nature of interest from credit card 49107
receivables and fees charged to card holders. 49108

(10) The numerator of the sales factor includes receipts from 49109
merchant discount if the commercial domicile of the merchant is in 49110
this state. Such receipts shall be computed net of any card holder 49111
charge backs, but shall not be reduced by any interchange 49112
transaction fees or by any issuer's reimbursement fees paid to 49113
another for charges made by its card holders. 49114

(11)(a)(i) The numerator of the sales factor includes loan 49115
servicing fees derived from loans secured by real property 49116
multiplied by a fraction the numerator of which is the amount 49117
included in the numerator of the sales factor pursuant to division 49118
(F)(4) of this section and the denominator of which is the total 49119
amount of interest and fees or penalties in the nature of interest 49120
from loans secured by real property. 49121

(ii) The numerator of the sales factor includes loan 49122

servicing fees derived from loans not secured by real property 49123
multiplied by a fraction the numerator of which is the amount 49124
included in the numerator of the sales factor pursuant to division 49125
(F)(5) of this section and the denominator of which is the total 49126
amount of interest and fees or penalties in the nature of interest 49127
from loans not secured by real property. 49128

(b) In circumstances in which the taxpayer receives loan 49129
servicing fees for servicing either the secured or the unsecured 49130
loans of another, the numerator of the sales factor shall include 49131
such fees if the borrower is located in this state. 49132

(12) The numerator of the sales factor includes receipts from 49133
services not otherwise apportioned under this section if the 49134
service is performed in this state. If the service is performed 49135
both within and without this state, the numerator of the sales 49136
factor includes receipts from services not otherwise apportioned 49137
under this section, if a greater proportion of the income 49138
producing activity is performed in this state based on cost of 49139
performance. 49140

(13)(a) Interest, dividends, net gains, but not less than 49141
zero, and other income from investment assets and activities and 49142
from trading assets and activities shall be included in the sales 49143
factor. Investment assets and activities and trading assets and 49144
activities include but are not limited to: investment securities; 49145
trading account assets; federal funds; securities purchased and 49146
sold under agreements to resell or repurchase; options; futures 49147
contracts; forward contracts; notional principal contracts such as 49148
swaps; equities; and foreign currency transactions. With respect 49149
to the investment and trading assets and activities described in 49150
divisions (F)(13)(a)(i) and (ii) of this section, the sales factor 49151
shall include the amounts described in such divisions. 49152

(i) The sales factor shall include the amount by which 49153
interest from federal funds sold and securities purchased under 49154

resale agreements exceeds interest expense on federal funds 49155
purchased and securities sold under repurchase agreements. 49156

(ii) The sales factor shall include the amount by which 49157
interest, dividends, gains, and other income from trading assets 49158
and activities, including, but not limited to, assets and 49159
activities in the matched book, in the arbitrage book, and foreign 49160
currency transactions, exceed amounts paid in lieu of interest, 49161
amounts paid in lieu of dividends, and losses from such assets and 49162
activities. 49163

(b) The numerator of the sales factor includes interest, 49164
dividends, net gains, but not less than zero, and other income 49165
from investment assets and activities and from trading assets and 49166
activities described in division (F)(13)(a) of this section that 49167
are attributable to this state. 49168

(i) The amount of interest, other than interest described in 49169
division (F)(13)(b)(iv) of this section, dividends, other than 49170
dividends described in that division, net gains, but not less than 49171
zero, and other income from investment assets and activities in 49172
the investment account to be attributed to this state and included 49173
in the numerator is determined by multiplying all such income from 49174
such assets and activities by a fraction, the numerator of which 49175
is the average value of such assets which are properly assigned to 49176
a regular place of business of the taxpayer within this state and 49177
the denominator of which is the average value of all such assets. 49178

(ii) The amount of interest from federal funds sold and 49179
purchased and from securities purchased under resale agreements 49180
and securities sold under repurchase agreements attributable to 49181
this state and included in the numerator is determined by 49182
multiplying the amount described in division (F)(13)(a)(i) of this 49183
section from such funds and such securities by a fraction, the 49184
numerator of which is the average value of federal funds sold and 49185
securities purchased under agreements to resell which are properly 49186

assigned to a regular place of business of the taxpayer within 49187
this state and the denominator of which is the average value of 49188
all such funds and such securities. 49189

(iii) The amount of interest, dividends, gains, and other 49190
income from trading assets and activities, including but not 49191
limited to assets and activities in the matched book, in the 49192
arbitrage book, and foreign currency transaction, but excluding 49193
amounts described in division (F)(13)(b)(i) or (ii) of this 49194
section, attributable to this state and included in the numerator 49195
is determined by multiplying the amount described in division 49196
(F)(13)(a)(ii) of this section by a fraction, the numerator of 49197
which is the average value of such trading assets which are 49198
properly assigned to a regular place of business of the taxpayer 49199
within this state and the denominator of which is the average 49200
value of all such assets. 49201

(iv) The amount of dividends received on the capital stock 49202
of, and the amount of interest received from loans and advances 49203
to, subsidiary corporations at least fifty-one per cent of whose 49204
common stock is owned by the reporting financial institution shall 49205
be allocated in and out of this state by the application of a 49206
ratio whose numerator is the sum of the net book value of the 49207
payor's real property owned in this state and the payor's tangible 49208
personal property owned in this state and whose denominator is the 49209
sum of the net book value of the payor's real property owned 49210
wherever located and the payor's tangible personal property owned 49211
wherever located. For purposes of calculating this ratio, the 49212
taxpayer shall determine net book value in accordance with 49213
generally accepted accounting principles. 49214

(v) For purposes of this division, average value shall be 49215
determined using the rules for determining the average value of 49216
tangible personal property set forth in division (D)(2) and (3) of 49217
this section. 49218

(c) In lieu of using the method set forth in division 49219
(F)(13)(b) of this section, the taxpayer may elect, or the tax 49220
commissioner may require in order to fairly represent the business 49221
activity of the taxpayer in this state, the use of the method set 49222
forth in division (F)(13)(c) of this section. 49223

(i) The amount of interest, other than interest described in 49224
division (F)(13)(b)(iv) of this section, dividends, other than 49225
dividends described in that division, net gains, but not less than 49226
zero, and other income from investment assets and activities in 49227
the investment account to be attributed to this state and included 49228
in the numerator is determined by multiplying all such income from 49229
such assets and activities by a fraction, the numerator of which 49230
is the gross income from such assets and activities which are 49231
properly assigned to a regular place of business of the taxpayer 49232
within this state, and the denominator of which is the gross 49233
income from all such assets and activities. 49234

(ii) The amount of interest from federal funds sold and 49235
purchased and from securities purchased under resale agreements 49236
and securities sold under repurchase agreements attributable to 49237
this state and included in the numerator is determined by 49238
multiplying the amount described in division (F)(13)(a)(i) of this 49239
section from such funds and such securities by a fraction, the 49240
numerator of which is the gross income from such funds and such 49241
securities which are properly assigned to a regular place of 49242
business of the taxpayer within this state and the denominator of 49243
which is the gross income from all such funds and such securities. 49244

(iii) The amount of interest, dividends, gains, and other 49245
income from trading assets and activities, including, but not 49246
limited to, assets and activities in the matched book, in the 49247
arbitrage book, and foreign currency transactions, but excluding 49248
amounts described in division (F)(13)(a)(i) or (ii) of this 49249
section, attributable to this state and included in the numerator, 49250

is determined by multiplying the amount described in division 49251
(F)(13)(a)(ii) of this section by a fraction, the numerator of 49252
which is the gross income from such trading assets and activities 49253
which are properly assigned to a regular place of business of the 49254
taxpayer within this state and the denominator of which is the 49255
gross income from all such assets and activities. 49256

(iv) The amount of dividends received on the capital stock 49257
of, and the amount of interest received from loans and advances 49258
to, subsidiary corporations at least fifty-one per cent of whose 49259
common stock is owned by the reporting financial institution shall 49260
be allocated in and out of this state by the application of a 49261
ratio whose numerator is the sum of the net book value of the 49262
payor's real property owned in this state and the payor's tangible 49263
personal property owned in this state and whose denominator is the 49264
sum of the payor's real property owned wherever located and the 49265
payor's tangible personal property owned wherever located. For 49266
purposes of calculating this ratio, the taxpayer shall determine 49267
net book value in accordance with generally accepted accounting 49268
principles. 49269

(d) If the taxpayer elects or is required by the tax 49270
commissioner to use the method set forth in division (F)(13)(c) of 49271
this section, it shall use this method on all subsequent returns 49272
unless the taxpayer receives prior permission from the tax 49273
commissioner to use or the tax commissioner requires a different 49274
method. 49275

(e) The taxpayer shall have the burden of proving that an 49276
investment asset or activity or trading asset or activity was 49277
properly assigned to a regular place of business outside of this 49278
state by demonstrating that the day-to-day decisions regarding the 49279
asset or activity occurred at a regular place of business outside 49280
this state. Where the day-to-day decisions regarding an investment 49281
asset or activity or trading asset or activity occur at more than 49282

one regular place of business and one such regular place of 49283
business is in this state and one such regular place of business 49284
is outside this state such asset or activity shall be considered 49285
to be located at the regular place of business of the taxpayer 49286
where the investment or trading policies or guidelines with 49287
respect to the asset or activity are established. Unless the 49288
taxpayer demonstrates to the contrary, such policies and 49289
guidelines shall be presumed to be established at the commercial 49290
domicile of the taxpayer. 49291

(14) The numerator of the sales factor includes all other 49292
receipts if either: 49293

(a) The income-producing activity is performed solely in this 49294
state; or 49295

(b) The income-producing activity is performed both within 49296
and without this state and a greater proportion of the 49297
income-producing activity is performed within this state than in 49298
any other state, based on costs of performance. 49299

(G) A qualified institution may calculate the base upon which 49300
the fee provided for in division (D) of section 5733.06 ~~(D)~~ of the 49301
~~revised code~~ Revised Code is determined for each of the tax years 49302
1998, 1999, 2000, ~~and~~ 2001, 2002, and 2003 by multiplying the 49303
value of its issued and outstanding shares of stock determined 49304
under division (B) of this section by a single deposits fraction 49305
whose numerator is the deposits assigned to branches in this state 49306
and whose denominator is the deposits assigned to branches 49307
everywhere. Deposits shall be assigned to branches in the same 49308
manner in which the assignment is made for regulatory purposes. If 49309
the base calculated under this division is less than the base 49310
calculated under division (C) of this section, then the qualifying 49311
institution may elect to substitute the base calculated under this 49312
division for the base calculated under division (C) of this 49313
section. Such election may be made annually for each of the tax 49314

years 1998, 1999, 2000, ~~and~~ 2001, 2002, and 2003 on the corporate 49315
report. The election need not accompany the report; rather, the 49316
election may accompany a subsequently filed but timely application 49317
for refund, a subsequently filed but timely amended report, or a 49318
subsequently filed but timely petition for reassessment. The 49319
election is not irrevocable and it applies only to the specified 49320
tax year. Nothing in this division shall be construed to extend 49321
any statute of limitations set forth in this chapter 49322

(H) If the apportionment provisions of this section do not 49323
fairly represent the extent of the taxpayer's business activity in 49324
this state, the taxpayer may petition for or the tax commissioner 49325
may require, in respect to all or any part of the taxpayer's 49326
business activity, if reasonable: 49327

(1) Separate accounting; 49328

(2) The exclusion of any one or more of the factors; 49329

(3) The inclusion of one or more additional factors which 49330
will fairly represent the taxpayer's business activity in this 49331
state; or 49332

(4) The employment of any other method to effectuate an 49333
equitable allocation and apportionment of the taxpayer's value. 49334

Sec. 5733.06. The tax hereby charged each corporation subject 49335
to this chapter shall be the greater of the sum of divisions (A) 49336
and (B) of this section, after the reduction, if any, provided by 49337
division (J) of this section, or division (C) of this section, 49338
after the reduction, if any, provided by division (J) of this 49339
section, except that the tax hereby charged each financial 49340
institution subject to this chapter shall be the amount computed 49341
under division (D) of this section: 49342

(A) Except as set forth in division (F) of this section, five 49343
and one-tenth per cent upon the first fifty thousand dollars of 49344

the value of the taxpayer's issued and outstanding shares of stock 49345
as determined under division (B) of section 5733.05 of the Revised 49346
Code; 49347

(B) Except as set forth in division (F) of this section, 49348
eight and one-half per cent upon the value so determined in excess 49349
of fifty thousand dollars; or 49350

(C) Except as otherwise provided under division (G) of this 49351
section, four mills times that portion of the value of the issued 49352
and outstanding shares of stock as determined under division (C) 49353
of section 5733.05 of the Revised Code. For the purposes of 49354
division (C) of this section, division (C)(2) of section 5733.065, 49355
and division (C) of section 5733.066 of the Revised Code, the 49356
value of the issued and outstanding shares of stock of a qualified 49357
holding company is zero. 49358

(D) The tax charged each financial institution subject to 49359
this chapter shall be that portion of the value of the issued and 49360
outstanding shares of stock as determined under division (A) of 49361
section 5733.05 of the Revised Code, multiplied by the following 49362
amounts: 49363

(1) For tax years prior to the 1999 tax year, fifteen mills; 49364

(2) For the 1999 tax year, fourteen mills; 49365

(3) For tax year 2000 and thereafter, thirteen mills. 49366

(E) No tax shall be charged from any corporation that has 49367
been adjudicated bankrupt, or for which a receiver has been 49368
appointed, or that has made a general assignment for the benefit 49369
of creditors, except for the portion of the then current tax year 49370
during which the tax commissioner finds such corporation had the 49371
power to exercise its corporate franchise unimpaired by such 49372
proceedings or act. The minimum payment for all corporations shall 49373
be fifty dollars. 49374